Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity

Fourth and Final Annual Report to Congress

For the period November 1, 2020 through October 31, 2021

Office of the Under Secretary of Defense for Acquisition and Sustainment

December 2021

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Message from the Panel Chair

On behalf of the “Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity,” hereafter referred to as “the Panel,” I am pleased to present the Panel’s fourth and final report to Congress. This report represents a culmination of four years of effort, research, debate, and stakeholder engagement by a diverse Panel comprised of senior executives and staff from 10 Federal agencies. The majority of the members have been serving on the Panel since its inception, and six lead the subcommittees established to support the Panel in implementing its statutory duties.

The Panel’s ambitious scope of work focused on developing actionable recommendations to update legislation, regulations, and policy that result, at a minimum, in the improvements in contracting between the AbilityOne Program and the Department of Defense (DoD) as well as with other Federal agencies. The Panel members, and the AbilityOne Central Nonprofit Agencies (CNAs) and the participating nonprofit agencies (NPAs), have invested significant resources to implement Panel recommendations, which to date are driving more efficiency in contracting, and greater transparency and enhanced stewardship in the AbilityOne Program. Additionally, this collaborative effort by all organizations involved will result in Program employment growth for veterans and individuals who are blind or have significant disabilities.

To accomplish the multi-faceted Panel mission, I was fortunate to have the full participation of the U.S. AbilityOne Commission Chairperson, the Commission Executive Director, the Commission Director of Veterans Employment and Initiatives, and the Inspector General of the U.S. AbilityOne Commission, as well as the other statutory members. A letter from the Commission Chairperson is attached as Appendix A.

The work of the Panel during its tenure reflects the extensive outreach with the AbilityOne community and other disability organizations. The Panel members had the opportunity to communicate directly with AbilityOne employees during virtual site visits to AbilityOne NPAs. Two of the companies visited have employees with disabilities performing critical contract cleaning services at the Pentagon. Another company visited illustrated their broad range of manufacturing investments and capacity of essential services, which creates highly-skilled jobs for veterans and individuals who are blind or have significant disabilities. The Panel also learned that the NPAs employ military spouses.

The Panel heard from other stakeholder organizations who made presentations during the Panel’s quarterly meetings. All of these engagements helped inform and shape the Panel recommendations and actions that impact the AbilityOne employees who are working on DoD contracts with approximately 472 community-based NPAs across the country.

In addition to creating jobs, the Panel learned more about the services and supports available to employees and individuals living in the local community. A former Navy Seal, who is blind and working at an AbilityOne NPA, stated “that to work, you first must be able to live.” The AbilityOne NPAs provide the valuable job skills training and other supports necessary for individuals with disabilities to live independently, and the NPAs provide life changing employment opportunities to veterans and individuals who are blind or have disabilities.
Although the Panel officially sunsets with the submission of this final report, the results of the recommendations will be enduring and have a positive impact for the AbilityOne community and the Federal contracting workforce. It is evident, particularly during the past 20 months of the pandemic, that the AbilityOne workforce is incredibly talented and a vital segment of the U.S. industrial base. By fulfilling Federal contract requirements, the AbilityOne employees and NPAs contribute daily to communities and local economies.

In particular, DoD depends on AbilityOne products and services to support the defense mission. Since the beginning of the pandemic, DoD contracting professionals have processed 900 contract actions valued at $84 million with the AbilityOne NPAs. These companies increased surge capacity to manufacture and deliver critical products and to maintain essential services to support the ongoing COVID-19 national emergency response. Employees who are blind and visually impaired, or who have significant disabilities, continue to sew and deliver high-demand items such as personal protective equipment, masks, and hospital gowns, and other AbilityOne workers are keeping Federal buildings and military hospitals clean and operational.

It has been an honor to serve as the Chair during this last year of Panel operations. I want to express my sincere appreciation to the members of the Panel and the subcommittees for their dedication and commitment to implementing the Panel mission. Through the joint efforts of the Panel, the AbilityOne community, the CNAs, the NPAs, disabilities organizations, and Congress; the AbilityOne Program has an optimistic future, and veterans and individuals who are blind or have significant disabilities will have a greater opportunity to work and lead independent lives in their local communities, and contribute to military readiness and to the strength of our Nation’s economic success.

Respectfully,

TENAGLIA.JOHN
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John M. Tenaglia
Principal Director
Defense Pricing and Contracting
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EXECUTIVE SUMMARY

As required by section 898(i)(2), of the National Defense Authorization Act (NDAA) for FY 2017 (Public Law 114-328), Appendix B, the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity (“the Panel”) is required to submit an annual report on its activities. The Panel has submitted four reports to Congress: a progress report in September 2017, the first annual report in January 2018, the second annual report in January 2020, and the third annual report in February 2021. This is the Panel’s fourth and final annual report to Congress that covers the period of November 1, 2020, through October 31, 2021. In accordance with section 898(j), the Panel sunsets with the submission of the final report.

During the four-year tenure of the Panel, a main consideration of the Panel’s work was the impact on the AbilityOne employment mission of creating jobs for individuals who are blind or have significant disabilities. The Panel was also asked by Congress to consider ways to increase eligibility for veterans and service-disabled veterans to work in the AbilityOne Program. Currently, the AbilityOne workforce has more than 42,000 employees who manufacture products and provide services to meet Federal contract requirements. Approximately 7,000 veterans work at the AbilityOne nonprofit agencies (NPAs); many of these veterans served in Vietnam, Afghanistan, and Iraq. In FY 2020, the AbilityOne Program conducted nearly $4 billion in business with Federal agencies. A map of United States identifying the AbilityOne Program dollars in each State is provided at Appendix C.

In 2021, the Panel, supported by six subcommittees, made progress towards implementing the Panel recommendations and participated in outreach events such as the virtual site visits with AbilityOne NPAs and forums hosted by the Central Nonprofit Agencies (CNAs) and the affiliated associations. The Panel met quarterly and the subcommittees met regularly and held a subcommittee virtual off-site in March. The Panel actions taken to date are improving the oversight, accountability, and transparency in contracting with the AbilityOne Program network, increasing employment opportunities, and are improving efficiency in contracting with the AbilityOne Program.

The Panel initially developed 41 recommendations, which were consolidated into 24 actionable recommendations as explained in the Panel’s second and third annual reports to Congress. Over the tenure of the Panel, some of the recommendations were implemented through policy issuances from the DoD and the U.S. AbilityOne Commission. There are 11 open recommendations that require more time for full implementation due to, for example, the update to the Commission’s regulations, which must go through the Federal rulemaking process. Once a final rule is published, numerous Panel recommendations may be fully implemented.

The final report to Congress will serve as a launchpad for the positive work of the Panel to continue after its sunset. To facilitate this activity, this report includes mini-reports for the organizations that are accountable for completing the Panel’s actionable recommendations.
There are reports for the following organizations: the U.S. AbilityOne Commission, Defense Acquisition University (DAU), and the Office of the Under Secretary of Defense for Acquisition and Sustainment/Defense Pricing and Contracting.

DoD senior staff will participate in efforts by stakeholder organizations to complete the Panel recommendations that improve efficiency in contracting with the Program. This is particularly important since DoD is the lead customer of the AbilityOne Program and AbilityOne employees are performing work on a diversity of DoD contracts. In FY 2021, DoD contracting officials procured more than $2.1 billion of AbilityOne products and services, employing nearly 35,000 veterans and individuals who are blind or have significant disabilities on DoD contracts. The AbilityOne companies continue to be a vital segment of the defense industrial base, which was reinforced by the manufacturing of critical products and delivery of essential services by the AbilityOne employees during the COVID-19 national emergency response.

Additionally, full implementation of the open recommendations will contribute to the success of the Federal level AbilityOne Representative (ABOR) Program, a requirement promulgated in the October 30, 2020, Office of Federal Procurement Policy (OFPP) Memorandum, “Increasing the Participation of Americans with Disabilities in Federal Contracting.”

For the past three years, the Panel has invested significant time in researching and understanding the topic of Competitive Integrated Employment (CIE) as applied to the AbilityOne Program. Individuals with disabilities who work in CIE are compensated at or above minimum wage and comparable to the customary rate paid to similar employees without disabilities; receive the same level of benefits provided to similar employees without disabilities; interact with individuals without disabilities to the same extent that employees without disabilities do; and are presented opportunities for advancement similar to those of employees without disabilities.
The implementation of CIE in disability employment programs involves multiple Federal agencies, including several who are on the Panel: specifically, the Department of Justice, Civil Rights Division, the Department of Education, Office of Special Education and Rehabilitative Services, and the Department of Labor, Office of Disability Employment Policy all have useful perspectives, expertise, and resources in this area. From their participation, the Panel learned about the legal and policy impacts of CIE for individuals with disabilities.

The Panel has worked on proposed legislation that would amend the statutory direct labor hour ratio and definition of direct labor in the Javits-Wagner-O'Day (JWOD) Act so as to both facilitate integration within the AbilityOne Program and incentivize upward mobility for AbilityOne employees with disabilities and outward mobility into the competitive labor market. Increasing integration within the AbilityOne Program not only will modernize the Program and improve consistency with current Federal disability rights law and employment policy, but will also benefit its employees with disabilities by incentivizing and providing greater opportunities for advancement as well as greater control over their own employment goals, skills and interests, services needed, and career development.

The Panel had sought to attach to this report a document with its recommended line-in/line-out amendments to the JWOD Act to amend the statutory direct labor ratio and definition of direct labor, but the agencies involved in this process require more time to finalize these recommendations. As such, further interagency work will continue after the Panel sunsets, and the line-in/line-out recommendations will be submitted to Congress separately in 2022. Agencies responsible for coordinating Federal disability policy will participate in this process, including the Department of Justice’s Civil Rights Division, the Department of Health and Human Services’ Administration for Community Living, the Department of Labor’s Office of Disability Employment Policy, the National Council on Disability, and the Department of Education’s Rehabilitation Services Administration; as well as the AbilityOne Commission. DoD will also provide guidance as it continues to lead or participate in working groups relating to the Program.

Resources: A consistent finding in each of the Panel reports is the limited resources in funding and staffing available to the U.S. AbilityOne Commission. The Panel continues to find there is a need for Congress to appropriate sufficient funding for the U.S. AbilityOne Commission it to successfully carry out its responsibilities related to the comprehensive oversight and compliance of the AbilityOne Program and to continue to implement the recommendations of the Panel and the U.S. AbilityOne Commission Office of Inspector General (OIG); and for the Commission to timely allocate such funding.
Additionally, the U.S. AbilityOne Commission OIG needs funding. In FY 2021, the staffing level of the office was a total of seven staff positions, which is insufficient resources for the OIG oversight mission that Congress mandates. The OIG’s funding level is $2.5 million for standing up a fully operating OIG with oversight responsibility on the Commission and its $4 billion AbilityOne Program; the OIG would require a funding level of $4.6 million to fulfill IG statutory requirements.

The majority of the Panel’s open recommendations, included in the attached mini-report for the U.S. AbilityOne Commission, require action by the Commission to establish or update policies, business practices, and regulations that will modernize the AbilityOne Program, and fulfill the mission to employ people who are blind or have significant disabilities. The Commission is operating with insufficient FY 2021 funding levels. The Commission’s funding level is $8 million, of which $1.379 million is allocated to its Oversight and Compliance office. The Oversight and Compliance office requires a funding level of $2.384 million to fulfill all mission functions.

In accordance with the U.S. AbilityOne Commission FY 2020 annual data compiled from the NPAs’ submission of Representations and Certifications, this lean budget is used to pay staff, make improvements to information systems used by the Commission, and oversee the Program’s two CNAs and 472 geographically dispersed NPAs that employ approximately 42,000 individuals who are blind or have significant disabilities, with a program size of $4 billion. The U.S. AbilityOne Commission will analyze currently available resources and, via budget requests, communicate shortfalls impacting the implementation of recommendations with greater mission capacity and speed of business to align with the National Defense Strategy. DoD requires updated business practices that drive greater performance and competition, for example, within the AbilityOne Program.

To reiterate from the Panel’s previous reports, the staffing and funding of the AbilityOne CNAs and the funding of the Federal customers who contract with AbilityOne NPAs far exceed the funding and resources of the U.S. AbilityOne Commission. The Panel recommendations are effecting a paradigm shift in the AbilityOne Program and the U.S. AbilityOne Commission’s responsibility to manage it. This results in positive outcomes for the customers and employees the AbilityOne Program serves. However, crucial funding and resources are needed for the U.S. AbilityOne Commission to implement the recommendations of the Panel and to continue the modernization of the AbilityOne Program’s policies and business practices. Over the past three years, both the Commission and the OIG have accomplished forward progress in the oversight of the AbilityOne Program. With the increased resources, the Commission can expand its oversight and compliance function, which preserves confidence in the Program and will help create more job opportunities for veterans and individuals who are blind or have significant disabilities.
**Program Goal:** The Panel’s previous three reports requested Congress enact a statutory DoD AbilityOne contract goal of 1.5 percent. For this report, the Panel is requesting Congress enact a statutory DoD AbilityOne contract goal of 1 percent targeted to increasing the employment of people with significant disabilities, which may include AbilityOne contracts as well as other means. The request for a 1 percent goal is consistent with the Office of Federal Procurement Policy (OFPP) guidance for FY 2021 (the period covered by this report), “Increasing the Participation of Americans with Disabilities in Federal Contracting,” issued on October 30, 2020. OFPP requested applicable Federal agencies to establish an ABOR program and make a minimum pledge equal to at least 1 percent of the agency’s total amount of funds obligated for annual contracts on AbilityOne products and services from the Procurement List operated pursuant to title 41 U.S.C. § 8503. While the OFPP memorandum facilitates a targeted pledge for AbilityOne participation in contracting, establishing a statutory goal will make it easier for the acquisition workforce to support the addition of new products and services to the AbilityOne Procurement List. Additionally, a statutory goal will drive performance metrics similar to other socioeconomic program goals in contracting. As a result of the Panel and OIG recommendations, the Commission has updated compliance policies, which has instilled more confidence and integrity in the AbilityOne Program.

**Panel Accomplishment Highlights**

The Panel diligently worked on AbilityOne Contracting Oversight, Accountability, and Integrity within the authorities of the NDAA, and procurement statutes and regulations. The Panel also supported pilot tests that may provide a basis for amending the JWOD Act, as it pertains to contracts employing people who are blind or have significant disabilities. Highlighted below are a number of Panel accomplishments that fulfill the statutory duties of the Panel.

**Outreach:** A priority for the Panel Chair was outreach and consultation with AbilityOne NPAs as well as with the CNAs and affiliated associations. A highlight of the Panel year was the virtual site visits with four separate AbilityOne nonprofit agencies, held between April and June 2021. Each site visit included an overview of the products and services provided by the respective companies as well as information about the training and services offered to the disabilities community in the areas of employment/jobs, rehabilitation, counseling, and medical. The companies also provided examples of CIE within their companies. Most importantly, the Panel heard presentations from AbilityOne employees. All of these engagements assisted the Panel in making informed decisions that resulted in more collaborative outcomes for the AbilityOne Program and employees.
Training: A primary statutory duty of the Panel was to develop AbilityOne training for the acquisition workforce. During the existence of the Panel, and to implement recommendation two, DAU worked closely with the U.S. AbilityOne Commission and subcommittee one of the Panel to develop and update relevant training that would have a positive impact on the oversight function of the Commission, efficiency in contracting, and employment growth for the Program. While these objectives were initially accomplished in 2018, DAU developed a comprehensive update to the Continuous Learning Module (CLM) 023, “DAU AbilityOne Training,” in 2021. Over the past year, the Panel continued to see an increase in the number of individuals completing CLM 023 across DoD, Federal agencies, and industry. In DoD’s 2021 National Disability Employment Awareness Month (NDEAM) memorandum, at Appendix D, encouraged contracting professionals and DoD ABORs to complete CLM 023 to meet continuous learning requirements. In addition to the DAU training, the U.S. AbilityOne Commission is developing several training documents and information sheets targeted to meet the varying needs of Program customers. It is anticipated these training aides will be posted to the AbilityOne and DAU websites by May 2022. Like Congress, the Panel recognizes that training is critical for all stakeholders contracting with the AbilityOne Program. Therefore, this report includes an attached mini-report for DAU to ensure training is continually updated after the Panel sunsets. Additionally, the CNAs will continuously update training for the NPAs to incorporate changes in law, regulation, and the Commission’s policies and procedures.

Compliance: As reported in the Panel’s third annual report, to implement recommendation three, subcommittee two assisted the U.S. AbilityOne Commission in successfully issuing compliance policies, which provide guidance across the AbilityOne network. As a result of the Panel’s recommendation and work of subcommittee two, the Commission successfully coordinated and issued eight compliance policies, which are posted on their website at: https://www.abilityone.gov/laws_regulations_policy/commission_policy_51_400.html. After the Panel sunsets, the Commission will continue to issue new and update compliance policies. As the Commission’s policies and regulations will require harmonization with any amendments of the JWOD Act, agencies involved in subcommittees two and four will provide the Commission with suggested harmonizing edits. This will take place after the Panel’s sunset due to the timing of the recommended amendments to the JWOD Act, discussed above.

Procurement List Information Management System (PLIMS): One of the statutory duties of the Panel was to improve business systems. To address this, the Panel developed recommendation 15 to update the Commission’s PLIMS. The successful implementation was shepherded by the Panel’s subcommittee seven. The Commission’s PLIMS has been updated to reflect detailed product and service information, and improves the search function for a more
user-friendly interface for customers. These improvements are resulting in more efficiency in market research by acquisition officials.

**AbilityOne Representative (ABOR) Program:** In collaboration with the AbilityOne Program, another significant action completed, is the establishment of the ABOR program across the DoD, effective October 1, 2021. This action is the result of Panel recommendation 18 initiated by subcommittee seven to establish a program based on the successful Air Force ABOR program. The ABOR program includes a strategic and data-driven approach to identifying new lines of business with the AbilityOne program and establishes a management level procurement pledge for growth in AbilityOne Program participation. The DoD Component strategic plans will be submitted to the Director of Contract Policy, Defense Pricing and Contracting (DPC).

Since the OFPP ABOR guidance was issued last year, the Chief Financial Officers Act agencies have designated an ABOR and have provided a pledge of contract spend to the Commission and to OFPP. The objective of the pledge is to increase the percentage of spend on products and services from the Procurement List, as well as new lines of business, to 1 percent of the total amount of funds obligated for contracts entered into in FY 2022, to the extent feasible. The DPC Director of Contract Policy is the Office of the Secretary of Defense representative for the OFPP ABOR program. The ABOR program will have an enduring impact across the Federal government and strengthens employment opportunities in contracting for individuals with disabilities. Currently, there is regular collaboration between the Federal level ABORs, the U.S. AbilityOne Commission, and the CNAs.

To achieve the objectives of the Executive Order (EO) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, DoD established a Defense Equity Team, which includes stakeholders from across the Department to include the Principal Director, DPC. Section 5 of the EO required DoD to conduct an equity assessment to identify potential barriers that underserved communities and individuals face regarding Federal programs. DoD completed the equity assessment and has held up the ABOR program as one means to achieve the objectives of recognizing that persons with disabilities are members of underserved communities for which the Department will provide full opportunities to participate in aspects of economic, social, and civic life.
The Contract Management Services (CMS) program provides Federal customers with an integrated suite of services to include non-inherently governmental functions in support of administrative contract closeout services, digital imaging of contracts, and document destruction. In FY 2021, the CMS program employed 142 people, including 100 individuals who are blind and 15 service-disabled veterans. To date, employees like Tanee Wall from VisionCorps based in Lancaster, Pennsylvania, have received more than 850,000 contracts for processing. Since the establishment of the CMS program over 10 years ago, 89 AbilityOne employees have been hired directly into Federal Government positions.

Section 508 Compliance: A significant success for the Panel was the implementation of recommendation 21, which was developed to enhance compliance with the accessibility requirements of the section 508 of the Rehabilitation Act of 1973, as amended. Compliance by acquisition officials is important in order for employees who are blind or visually impaired to work in knowledge-based jobs. In addition to the available Federal level section 508 training and resources available online at https://www.section508.gov, the Commission has made progress with the update to the procurement regulations. On August 11, 2021, the final rule for the Federal Acquisition Regulation (FAR), “Section 508-Based Standards in Information and Communication Technology (ICT),” was published in the Federal Register to align FAR language to the updated accessibility standards issued by the U.S. Access Board. The update is consistent with FAR Subpart 39.2, which implements the section 508 requirements for contracting officials to review solicitation documents to confirm that the section 508 standards are appropriately considered and clearly stated in ICT acquisitions.

Veterans Employment: As stated previously, there are approximately 7,000 veterans employed in the AbilityOne Program and performing work on Federal contracts for products and services on the Procurement List. There are more than 3,200 wounded, ill, or injured veterans assigned to AbilityOne direct labor jobs. The balance are the veterans working in indirect positions, including supervisory, management, and team leader roles. As previously mentioned the Panel conducted four virtual site visits in 2021. During these site visits, the Panel learned that the AbilityOne Program has a significant number of military spouses that work in at least two of the NPAs that participated in the virtual visits. Subcommittee 8(b) Veterans Eligibility looked at recommendation 25, which was to recommend criteria for Veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that considers the definitions of disabilities used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission. The subcommittee was led by the
former 15th Sergeant Major of the Army and included active duty or retired senior noncommissioned officers from several Federal agencies and non-Federal agencies. As reported in the Panel’s third annual report to Congress, the subcommittee invested significant effort in researching employment opportunities for Veterans in the AbilityOne Program and developed eight actions for the Commission to increase employment for Veterans. The Panel concurred and closed recommendation 25. The Commission will continue to work with other Federal agencies, Veteran Service Organizations, and Military Support Organizations to increase employment opportunities for veterans within the AbilityOne Program.

Wages and 14(c) in the AbilityOne Program: While the Panel did not make any specific recommendations to eliminate subminimum wages paid to persons with disabilities on Federal contracts, as authorized under 14(c) of the Fair Labor Standards Act, the Panel discussion created more awareness on this issue. The Panel commends the U.S. AbilityOne Commission for accelerating its effort to phase-out the use of 14(c) certificates from the AbilityOne Program because paying all employees, including those with significant disabilities, at least the minimum wage supports equity, advances economic justice, and implements the objectives of EO 14026, “Increasing the Minimum Wage for Federal Contractors,” to raise the minimum wage on covered Federal contracts to $15.00 and explicitly states there is no exception for people with disabilities. Since some Federal contracts are not covered by the Executive Order, the Commission is being proactive in bringing all AbilityOne contract employees up to the same wage rates as their counterparts who do not have disabilities. A proposed rule, “Prohibition on the Payment of Subminimum Wages Under 14(c) Certificates as a Qualification for Participation as a Nonprofit Agency Under the Javits-Wagner-O’Day Program,” was published in the Federal Register on October 12, 2021, 86 FR 56679.
Section I: Overview

Background
Section 898, of the NDAA for FY 2017, (Public Law 114-328) required the Secretary of Defense to establish the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity,” hereafter referred to as “the Panel.” The primary mission of the Panel is to identify vulnerabilities and opportunities in DoD contracting within the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established subcommittees to fulfill its duties as required by section 898(c) and to assist the Panel members and senior-level representatives.

Panel Membership
During the timeframe covered by this report, the Principal Director, DPC, served as the Panel Chairman (“the Chair”).

Section 898(a)(2) was specific in the composition of the Panel and also provides discretion to the Panel Chair in identifying other representatives, as needed. The Panel consists of representatives of the Office of the Secretary of Defense and its DoD Inspector General, the U.S. AbilityOne Commission, and the U.S. AbilityOne Commission Inspector General, as statutory members. The Panel’s membership also consists of senior leaders and representatives from the military service branches, Department of Justice, Department of Veterans Affairs, Department of Labor, the General Services Administration, the Department of Education, the National Aeronautics and Space Administration, and DAU.

As identified in the first report to Congress, the DoD organizations and other applicable organizations responded to the Under Secretary of Defense for Acquisition and Sustainment’s call for nominations. The Panel Chair and Executive Secretary reviewed the nominations of the members to serve on the Panel, and identified members from other organizations. The Panel Chair added members from the Army Fellowship program and several other advisors to augment the Panel’s veterans subcommittee responsible for defining the eligibility criteria to employ seriously wounded, ill, and injured veterans to the AbilityOne Program. The membership includes representatives from agencies and departments who can offer...
expertise to accomplish the specified Panel duties. The organizations identified in Figure one are represented on the Panel.

**Figure 1. Panel Membership**

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<thead>
<tr>
<th>Representatives (Organizations)</th>
<th>Office/Position</th>
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<tbody>
<tr>
<td>Panel Chairman</td>
<td>Office of the Under Secretary of Defense (Acquisition and Sustainment); Principal Director, Defense Pricing and Contracting (SES)</td>
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<tr>
<td>Executive Secretary</td>
<td>Department of the Army, Army Contracting Command – Aberdeen Proving Ground; Executive Director (SES)</td>
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<tr>
<td>U.S. AbilityOne Commission</td>
<td>Chairperson (SES)</td>
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<td>U.S. AbilityOne Commission</td>
<td>Executive Director (SES)</td>
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<td>U.S. AbilityOne Commission</td>
<td>Directorate of Veteran Employment Initiatives</td>
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<tr>
<td>Office of the Under Secretary of Defense (Acquisition and Sustainment)</td>
<td>Director, Contract Policy, Defense Pricing and Contracting (SES)</td>
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<tr>
<td>Department of the Army</td>
<td>Deputy Assistant Secretary of the Army (Procurement) (SES)</td>
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<td>Department of the Air Force</td>
<td>Associate Deputy Assistant Secretary of the Air Force (Contracting) (SES)</td>
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<td>Department of the Navy</td>
<td>Deputy Assistant Secretary of the Navy; Naval Supply Systems Command, Assistant Commander for Contracting (SES)</td>
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<td>Deputy Assistant Secretary of the Navy; Naval Facilities Command, Assistant Commander for Acquisition (SES)</td>
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<td>Troop Support, Acquisition Executive (SES)</td>
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<td>Deputy Assistant Director for Operations (SES)</td>
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<td>Defense Acquisition University</td>
<td>Center Director for Contracting</td>
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<td>Defense Health Agency</td>
<td>Director of Contracting (SES)</td>
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<td>U.S. Department of Justice</td>
<td>Office of the Assistant Attorney General, Civil Rights Division</td>
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<td>Civil Rights Division, Disability Rights Section, Deputy Chief</td>
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<td>UNICOR, General Counsel</td>
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<td>U.S. Department of Justice</td>
<td>Office of the Inspector General, Deputy Assistant Inspector General for Investigations</td>
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<td>Representatives (Organizations)</td>
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<td>Deputy Assistant Secretary, Office of Disability Employment Policy (ODEP)</td>
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<td>U.S. General Services Administration</td>
<td>Senior Procurement Executive (SES)</td>
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<td>Headquarters, Office of Procurement</td>
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<td>Office of Special Education and Rehabilitative Services, Deputy Commissioner, Rehabilitation Services Administration</td>
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<td>Veterans Readiness and Employment Service; Director, Rehabilitation Services (SES)</td>
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</tbody>
</table>

In addition to the above membership, the Office of Management and Budget is included on the Panel email communications and invitations for meetings.
Meetings and Events
As specified in section 898, the Panel meets as determined necessary by the Chair, but not less than once every four months. The Panel subcommittees meet regularly, as determined by the subcommittee lead, to make progress in achieving its mission. Figure two provides a summary of the Panel meetings and associated agendas for the reporting period from November 1, 2020, through October 31, 2021. During the meetings, Panel members shared information, ideas, and perspectives; and reviewed status of implementing actionable recommendations; debated issues, reached agreement on when to close a recommendation, and heard from guest speakers and employees from the AbilityOne Program.

Figure 2. Schedule of Panel Meetings (reporting period Nov 1, 2020 – Oct 31, 2021)

<table>
<thead>
<tr>
<th>Date</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 4, 2020</td>
<td>Panel Meeting (Virtual)</td>
</tr>
<tr>
<td></td>
<td>• Status of AbilityOne pilots.</td>
</tr>
<tr>
<td></td>
<td>• Central Nonprofit Agencies and affiliated associations provided</td>
</tr>
<tr>
<td></td>
<td>perspectives on the prioritization of Panel recommendations;</td>
</tr>
<tr>
<td></td>
<td>specifically, SourceAmerica, the National Council for</td>
</tr>
<tr>
<td></td>
<td>SourceAmerica Employers (NCSE), the National Industries for</td>
</tr>
<tr>
<td></td>
<td>the Blind (NIB), and the National Association for the</td>
</tr>
<tr>
<td></td>
<td>Employment of People Who Are Blind (NAEPB).</td>
</tr>
<tr>
<td>February 11, 2021</td>
<td>Panel Meeting (Virtual)</td>
</tr>
<tr>
<td></td>
<td>• Reviewed Panel Focus for 2021.</td>
</tr>
<tr>
<td></td>
<td>• Subcommittee progress updates.</td>
</tr>
<tr>
<td>March 31, 2021</td>
<td>Subcommittee Leader Off-Site (Virtual)</td>
</tr>
<tr>
<td></td>
<td>• Reviewed schedule for each recommendation and the actions.</td>
</tr>
<tr>
<td></td>
<td>needed to complete implementation.</td>
</tr>
<tr>
<td>May 27, 2021</td>
<td>Panel Meeting (Virtual)</td>
</tr>
<tr>
<td></td>
<td>• Discussed the final report to Congress.</td>
</tr>
<tr>
<td></td>
<td>• Subcommittee progress updates.</td>
</tr>
<tr>
<td>August 31, 2021</td>
<td>Panel Meeting (Virtual)</td>
</tr>
<tr>
<td></td>
<td>• Presentations by SourceAmerica, the NCSE, the NIB, and the</td>
</tr>
<tr>
<td></td>
<td>NAEPB.</td>
</tr>
<tr>
<td></td>
<td>• Subcommittee progress updates.</td>
</tr>
</tbody>
</table>
Outreach and Consultation

In accordance with section 898, consultation with the CNAs and NPAs continued to be of upmost importance for the Panel. Figure three is a table of the Panel outreach with the CNAs and NPAs. This list does not include the various meetings and communications between the subcommittees and the CNAs and NPAs, or with the disabilities organizations contacted by the subcommittee leads. The written inputs received from SourceAmerica, the NCSE, NIB, and the NAEPB are provided at Appendix E. The Panel Chair provided these documents to the Panel members and subcommittee leads for consideration in the implementation of the recommendations.

Figure 3. External Outreach Events with Stakeholders

<table>
<thead>
<tr>
<th>Date</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 1, 2020</td>
<td>Panel Chair spoke at the NCSE West CEO and Senior Leader Forum; articulated the priorities of the Panel.</td>
</tr>
<tr>
<td>March 2, 2021</td>
<td>Panel Chair spoke at the NCSE-East CEO and Senior Leader Forum; articulated the priorities of the Panel.</td>
</tr>
<tr>
<td>April 23, 2021</td>
<td>Panel virtual site visit with Skookum Contract Services, an AbilityOne nonprofit agency in the SourceAmerica network.</td>
</tr>
<tr>
<td>May 19, 2021</td>
<td>Panel Chair - a keynote speaker at the 2021 SourceAmerica Virtual National Conference, section 898 Panel session. Subcommittees Six Lead participated as well. Addressed priorities for the Panel and answered questions.</td>
</tr>
<tr>
<td>June 8, 2021</td>
<td>Panel virtual site visits with Didlake and Chimes, both AbilityOne nonprofit agencies in the SourceAmerica network.</td>
</tr>
<tr>
<td>June 28, 2021</td>
<td>Panel virtual site visit with NewView Oklahoma, a NIB associated agency.</td>
</tr>
<tr>
<td>Ongoing</td>
<td>Collaborative meetings with the U.S. AbilityOne Commission, SourceAmerica, and the NCSE Executive Committee to support implementation of the Panel recommendations.</td>
</tr>
<tr>
<td>Ongoing</td>
<td>Meetings with the U.S. AbilityOne Commission, SourceAmerica, and Mathematica Policy Research to discuss progress on the Direct Labor Hour ratio pilots.</td>
</tr>
</tbody>
</table>

Note: Roundtable discussions were held and focused on implementing recommendations, understanding the impact of recommendations, and obtaining CNA/NPA feedback.
Summary of Recommendations

The Panel reported on 24 recommendations in the third Report to Congress. Thirteen recommendations are tracked as complete, and the remaining are in various stages of implementation. Figure four provides the List of Recommendations, their completion status, and identifies the mini-report for organizations responsible for continuing the implementation of the recommendations after the Panel sunsets.

Figure 4. List of Panel Recommendations

<table>
<thead>
<tr>
<th>#</th>
<th>Recommendation</th>
<th>Complete</th>
<th>Mini-Report</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Subcommittee One: Inspector General</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Implement existing policy by DoD requiring Contracting Officers to check the AbilityOne PL, and take training on the AbilityOne Program.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented.</td>
<td>✓</td>
<td>Defense Acquisition University working with the U.S. AbilityOne Commission</td>
</tr>
<tr>
<td><strong>Subcommittee Two: Eliminate Waste, Fraud, and Abuse</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Increase oversight and strengthen audit coverage.</td>
<td>Partially; ongoing efforts to continue</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>4</td>
<td>Impose stricter requirements on NPAs for documentation and disability determinations.</td>
<td>Ongoing efforts to continue by the Commission</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>5</td>
<td>Prohibit Use of Program Fee for Lobbying Expenses.</td>
<td>✓</td>
<td>Legislative language provided in Appendix F</td>
</tr>
<tr>
<td><strong>Subcommittee Three: Employment Initiatives (merged with Subcommittee Five to form Subcommittee Eight)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subcommittee Four: Laws and Regulations</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Recommend an amendment to the JWOD Act’s 75 percent Direct Labor Hour ratio requirement, 41 U.S.C. §§ 8501(6)(C), (7)(C), to promote employment and upward mobility of individuals with disabilities in integrated work environments, and provide for implementation requirements and guidelines.</td>
<td>Legislative language to be submitted separately</td>
<td>See Executive Summary, pages 6 &amp; 7</td>
</tr>
<tr>
<td>7</td>
<td>Amend the JWOD Act’s definition of “Direct Labor,” 41 U.S.C. §§ 8501(3), to encourage upward mobility and</td>
<td>Incorporated into</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#</th>
<th>Recommendation</th>
<th>Complete</th>
<th>Mini-Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Amend the JWOD Act’s definition of “severely disabled,” 41 U.S.C. §§ 8501(5) and 8(8), to eliminate the presumption that eligible individuals are not competitively employable and to clarify and institute a workable definition.</td>
<td>Recommendation Six</td>
<td>See Executive Summary, pages 6 &amp; 7</td>
</tr>
<tr>
<td>9</td>
<td>Develop policy and implement business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DoD contracts with AbilityOne NPAs.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>10</td>
<td>Develop policy establishing NPA recommendation/allocation procedures.</td>
<td>✓</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>11</td>
<td>Establish business rules for competition and assignment of work among AbilityOne Program NPAs.</td>
<td>In process</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>12</td>
<td>Establish penalties if a CNA or NPA does not follow policies and procedures.</td>
<td>In process</td>
<td>U.S. AbilityOne Commission, Defense Pricing &amp; Contracting</td>
</tr>
<tr>
<td>13</td>
<td>Reduce the existing gaps and deficiencies in CNAs’ processes.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>14</td>
<td>Revise 41 Code of Federal Regulation (CFR) 51 to include information regarding the deauthorization of NPAs as the authorized source on the PL.</td>
<td>In process</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>15</td>
<td>Update the Procurement List Information Management System (PLIMS) to reflect detailed information, improve the search functions to enable a more user-friendly interface, and be usable to outside agencies.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>16</td>
<td>Deploy an Information Technology (IT) solution either utilizing a system where the PL can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues.</td>
<td>In process</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>17</td>
<td>Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers.</td>
<td>✓</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>#</td>
<td>Recommendation</td>
<td>Complete</td>
<td>Mini-Report</td>
</tr>
<tr>
<td>----</td>
<td>--------------------------------------------------------------------------------</td>
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<td>-------------------------------------------------</td>
</tr>
<tr>
<td>18</td>
<td>Implement DoD wide policy to designate an ABOR program similar to the Air Force model and includes a goal for growth in AbilityOne Program participation.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td>19</td>
<td>Pursue Defense FAR Supplement (DFARS) (Procedures, Guidance, and Information [PGI] language) to detail how to do business with the AbilityOne Program.</td>
<td>Partially; ongoing efforts to continue</td>
<td>U.S. AbilityOne Commission, and Defense Pricing &amp; Contracting</td>
</tr>
<tr>
<td>20</td>
<td>Recommend change to allotted timeframe currently required by the Administrative Procedures Act when adding products or services to the PL.</td>
<td>✓</td>
<td>Legislative language provided in Appendix F</td>
</tr>
<tr>
<td>21</td>
<td>Incorporate section 508 training for contracting personnel to address DoD-wide section 508 compliance shortfall and use DAU online and classroom training to teach AbilityOne information.</td>
<td>✓</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td><strong>Subcommittee Eight: Employment Initiatives and Veterans Eligibility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>The AbilityOne Commission should adopt policies that support competitive wages, inclusive work settings, and opportunities for advancement of individuals with disabilities, such as regulations that eliminate the payment of subminimum wages in the AbilityOne program.</td>
<td>Partially; ongoing efforts to continue</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>23</td>
<td>Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies.</td>
<td>✓</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>24</td>
<td>Modify the Individual Eligibility Evaluation process to enhance the analysis of meeting the criteria for blindness and/or significant disability and the certification of results.</td>
<td>In process</td>
<td>U.S. AbilityOne Commission</td>
</tr>
<tr>
<td>25</td>
<td>Recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission.</td>
<td>✓</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Section II: Conclusion

Panel Sunset
The Panel formally sunsets with the submission of this final report to Congress. For the positive work of the Panel to continue, this report includes actionable mini-reports for the organizations that are accountable for completing the Panel’s recommendations. There are reports for the following organizations: the U.S. AbilityOne Commission, DAU, and the Office of the Under Secretary of Defense for Acquisition and Sustainment/DPC. In addition, Appendix F provides legislative language and explanatory language for Congress to consider.

The work of the Panel the past four years involved significant commitment and collaboration to develop recommendations, take actions to implement the recommendations, administer pilots, and participate in outreach engagement, all which address the statutory duties of the Panel. For the U.S. AbilityOne Commission to take actions to further implement the Panel’s recommendations, it is crucial for Congress to appropriate sufficient funding for the Commission’s employment mission of creating job opportunities for individuals who are blind or have significant disabilities.

Section III: Mini-Reports (attached as stated)

Report 1 – U.S. AbilityOne Commission
Report 2 – Defense Acquisition University
Report 3 – Office of the Under Secretary of Defense for Acquisition and Sustainment/DPC

Section IV: Appendices (attached as stated)

Appendix A – Letter from the U.S. AbilityOne Commission Chair to the Panel Chair
Appendix B – Section 898 of the NDAA for FY 2017
Appendix C – U.S. AbilityOne Commission Program Site Map of the United States
Appendix D – DoD National Disability Employment Awareness Month Memorandum
Appendix E – Consensus letters from AbilityOne Organizations to the Panel Chair
Appendix F – Identification of Issues for Congressional Action
Mini-Report

from the

Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity

for the

U.S. AbilityOne Commission

December 2021
Panel Request
The Panel requests the U.S. AbilityOne Commission continue to work on actions to fully implement the Panel’s recommendations 3, 4, 10, 11, 12 (with OUSD(A&S)/DPC), 14, 16, 17, 19 (with OUSD(A&S)/DPC), 20, 21, 22, and 24 as described below.

Introduction
Section 898, of the National Defense Authorization Act for FY 2017, (Public Law 114-328) required the Secretary of Defense to establish the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity” (“the Panel”). The primary mission of the Panel was to identify vulnerabilities in Department of Defense (DoD) contracting with the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established subcommittees to align with the statutory duties as required by section 898(c). In accordance with section 898(j), the Panel sunsets with the submission of the final Report to Congress. The Panel submitted its fourth and final report to Congress in December 2021.

At the time of the Panel sunset, there were 11 recommendations in various phases of implementation that require more time for full implementation due to, for example, the update to the Commission’s regulations, which must go through the Federal rulemaking process. To continue the positive work of the Panel, the Panel’s final report to Congress includes this mini-report for the U.S. AbilityOne Commission to take the lead and work with other organizations, as needed, on actions described below to fully implement the applicable recommendations.

Panel Recommendations for the U.S. AbilityOne Commission

Recommendation 3: Increase oversight and strengthen audit coverage.

Recommendation 4: Impose stricter requirements on NPAs for documentation and disability determinations.

Background:
The implementation for recommendations 3 and 4 were led by the Panel’s subcommittee two, Eliminate Waste, Fraud, and Abuse.

Section 898(c)(2) – Take actions to eliminate waste, fraud, and abuse with respect to contracts of DoD and the Commission.

Subcommittee two found that the Commission required more compliance staff in order to fulfill its key functions of providing oversight over CNAs and NPAs and ensuring that these agencies comply with federal law. Subcommittee two also found that determinations of individual
eligibility for the AbilityOne Program were potentially affected by bias, and that NPA performance on JWOD Act requirements was difficult to evaluate due to poor or complicated data/record-keeping and tracking of hours. Before the issuance of new and updated Commission compliance policies to implement the Panel’s recommendations three and four, the NPAs’ compliance with documentation and eligibility requirements had been hindered by a lack of guidance following the Commission’s withdrawal of its outdated Compliance Manual (published in 2007).

**Implementation Status:**
With respect to Recommendation 3, subcommittee two recommended in past reports that Congress eventually increase funding for the Commission’s Oversight and Compliance Directorate to $2.384 million per year, to enable the Oversight and Compliance Directorate to maintain a permanent staff of 17.66 full-time employees. The Directorate’s FY 2021 budget was $1.379 million, which was sufficient to fund 9.33 full-time employees. As of August 2021, the Directorate’s staff comprised 6.00 full-time employees (plus one detailee who has since left the Commission). The Commission should work expeditiously to hire the remaining compliance staff members allowed under its FY 2022 budget, and to continue increasing the staff size of the Oversight and Compliance Directorate as Congress continues to provide more funding in the future.

With respect to Recommendation 4, in the summer of 2020, the Commission prepared a series of new and updated compliance policies, which are designed to replace the manual in providing guidance for NPAs. Subcommittee two reviewed the draft policies in June 2020 and more recently in July 2021, and provided edits and feedback to the Commission. On August 15, 2020, the Commission finalized the majority of these compliance policies, incorporating many of the Subcommittee’s edits and suggestions. Two compliance policies, 51.403 and 51.410, were further revised on November 12, 2020. An additional compliance policy will be issued in the near future. All of the policies are posted on the Commission’s website at https://www.abilityone.gov/laws_regulations_and_policy/commission_policy_51_400.html.

The compliance policies are:

51.400 – NPA Overall Compliance Policy (August 15, 2020)
51.401 – Direct Labor Hour Ratio Requirements (August 15, 2020)
51.401-01 – Phase-in Procedures (March 22, 2013)
51.401-02 – Surge Requirements Procedure (October 17, 2012)
51.402 – Initial Qualification of Nonprofit Agencies (March 22, 2013)
51.403 – Nonprofit Agencies Out of Compliance with Commission Regulations (November 12, 2020)
51.404 – On-site Compliance Reviews (March 22, 2013)
51.405 – Individual Eligibility Evaluation (IEE) Documentation (to be issued in near future)
As the Commission’s policies and regulations will require harmonization with any amendments to the JWOD Act, agencies involved in subcommittees two and four will provide the Commission with suggested harmonizing edits. This will take place after the Panel’s sunset due to the timing of the recommended amendments to the JWOD Act.

On August 4, 2020, the Commission also created a related Oversight and Compliance Frequently Asked Questions page on its website, which will be updated as needed. As noted above, an additional revised compliance policy is in coordination and will be published in the near future.

**Recommendation 10:** Develop policy establishing NPA recommendation/allocation procedures.

**Background:**
The implementation for recommendation 10 was led by the Panel’s subcommittee six, Acquisition and Procurement.

Section 898(c)(6) – recommend ways the DoD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Subcommittee six invited the CNAs and the CEO Competition Roundtable to provide an understanding of the recommendation and allocation process. The subcommittee learned that the CNAs perform a competition of a customer requirement that leads to the recommendation of the NPA to the U.S. AbilityOne Commission for addition to the Procurement List. There is no policy or process for routine recompetitions within the Program. While SourceAmerica, who holds the majority of service contracts, submits an annual report to AbilityOne that identifies the results of competitions within their network of NPAs based on responses to their Opportunity Notices (ONs), the U.S. AbilityOne Commission does not have visibility into the competition results on individual Procurement List additions. Currently SourceAmerica recommends the NPA based on highest technical rating and past experience only. The Fair Market Price (FMP) is determined after selection and negotiated amongst the CNA, the NPA and the customer.

The draft policy drafted by subcommittee six allows for more transparency and involvement from the Federal customer in the recommendation of the NPA to the U.S. AbilityOne Commission on the competition results. This process targets new work to the program and
recompetition for service contracts valued at $10 million or greater annually and performed on Federal installations/properties. The new process will focus on a best value with trade-off analysis that will consider a Social Impact proposal, a Technical proposal, Past Performance, and Price. The Social Impact proposal will include such subfactors to be evaluated as NPA size, percentage of disabled labor hours, Quality Work Environment (QWE) certification, mentorship program participation, etc. The CNA will evaluate the Social Impact proposal and the Federal customer evaluates the Technical proposal, Past Performance, and Price. The results of the proposal analysis are provided to a member of the U.S. AbilityOne Commission staff designated as the NPA Recommendation Authority (NPARA) who prepares the NPA Recommendation Document (NPARD). The NPARD is provided to the U.S. AbilityOne Commission for vote to complete the allocation process.

The results of the new proposed process will maximize competition within the Program and ensure equitable selection and allocation of work. This includes maximizing job opportunities for persons with disabilities, including veterans with disabilities, through the Social Impact proposal that will identify participation levels for these individuals. It will also consider the size of the NPA, mentorship programs, teaming opportunities, contributions to the community, and the quality of the employment of individuals with disabilities. The Technical proposal will focus on the NPAs’ capability to perform the Performance Work Statement (PWS). Past Performance for competing NPAs will be evaluated to determine how well they have performed on contracts for similar services, and the Price proposal will focus on the cost to the customer for the effort. By evaluating price as part of the recommendation process, the customer could see cost savings while still considering the social impact of creating jobs for persons with disabilities. The new evaluation process that leads to the recommendation will be transparent to the U.S. AbilityOne Commission since the Commission will be provided the source recommendation documentation, the NPARD.

Subcommittee six found that the mechanisms within the existing Cooperative Agreements and the implementation of the new source selection recommendation process will increase the Commission's transparency and oversight in the CNAs’ processes. The U.S. AbilityOne Commission can then establish a Cooperative Agreement metric that measures compliance with the mandatory NPA Recommendation policy that influences the CNAs’ ceiling fee determination.

In accordance with Section 5(f) of Commission Policy 51.301 the Commission retains the authority, on an exception basis, to direct CNA(s) to reassign or reallocate work using CNA-established procedures when it is in the best interest of the Government. This responsibility can be exercised to meet critical product or service delivery requirements and/or to further the AbilityOne Program mission to enhance employment opportunities or other significant programmatic matters.

In accordance with section 6.1.4.9.1 of NIB’s Assignment policy, when NIB assigns a project that will involve more than one NIB-associated NPA, agencies will be identified based on the assignment recommendation/allocation criteria identified in section 6.1.4.2.2.6, Qualifications. Agencies are identified/communicated within the assignment letter if they are a primary, secondary, or back up agency and based on the condition constituting the assignment disposition.
The Contracting Officer has the same authority that he or she has in any other contract (as set forth in the FAR) to document poor performance and issue a cure notice or terminate contracts; however, before terminating a contract or cancelling an order, the contracting officer is directed in FAR 8.705-4(c) to “refer the matter for resolution first to the [CNA] and then, if necessary, to the Commission.” If a Contracting Officer determines he or she must cancel an order/terminate a contract, he or she must notify the CNA and, if practical, request a reallocation of the order pursuant to FAR 8.705-4(d). The CNA must comply with AbilityOne Policy 51.301 and coordinate with the Commission and the Contracting Officer to compete a requirement already on the PL in order to recommend a new NPA.

When work is reallocated within the AbilityOne Program, the jobs of incumbent employees with disabilities need to be protected. The Commission does not have any formal business rules in place that protect disabled employees when work is reallocated; though in practice, the existing workforce is interviewed, their disability documentation is reviewed, and they are normally offered employment by the successor NPA.


In the Project Assignment performance audit, the OIG assessed the extent to which the implementation of the project assignment and allocation process by the CNAs is effective and follows applicable laws and regulations as well as established policies and procedures. The IG reviewed the Commission and CNAs’ policies and procedures as well as best practices for making recommendations to the Commission for NPAs’ project assignments and allocation of orders.

In the Procurement List performance audit, the OIG assessed whether the PL addition process is transparent and performed efficiently, effectively, and in compliance with applicable laws, regulations, and policies. The audit also assessed the effectiveness of the policies, procedures, and practices employed by the Commission when approving the addition or removal of products and services from the Procurement List, as well as CNA processes for producing and providing Procurement List addition packages.

The findings in the audits will be instrumental for a variety of needs and improvements with the Commission.

During 2020, subcommittee six submitted the draft process map to the Commission’s AbilityOne Competition Subcommittee and they in turned developed the draft policy. It is anticipated the draft policy will be completed and submitted to the AbilityOne Commission staff for implementation in Mar 22. Accordingly, recommendation 10 is considered closed by the Panel, with the understanding that the Commission may coordinate the policy with the CNAs and Commission once the final rule to the Commission regulations is published, if applicable.
**Implementation Status:** The NPA Competition policy requires a change to 41 CFR 51 (recommendation 14) to affirm that the U.S. AbilityOne Commission has the authority to compete requirements within the Program and to evaluate price.

**Panel Recommendation 11:** Establish business rules for competition and assignment of work among AbilityOne Program NPAs.

**Background:**
The implementation for recommendation 11 was led by the Panel’s subcommittee six, Acquisition and Procurement.

Section 898(c)(6) – recommend ways the DoD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Overseen by subcommittee six, a working group was formed in June 2021 comprised of subject matter experts from the Commission, OUSD(A&S)/DPC, the Army, the Navy, and the Army. The working group is developing a source limitation policy for competition and re-competition and is anticipated to be submitted to the AbilityOne Commission staff in March 2022. The subcommittee six draft would require that any restrictions on all NPAs having the ability to apply to Opportunity Notices issued by the CNA must be approved by the U.S. AbilityOne Commission staff. The CNA would have to justify the restriction to full competition, to the satisfaction of the AbilityOne staff, to help ensure equitable selection and allocation of work. Also, the Commission is in the process of revising the CFR (recommendation 14) to more clearly acknowledge the Commission’s authority to reallocate work.

This new source recommendation process addresses not only developing policy establishing NPA recommendation/allocation procedures, but also implements business practices that provide sufficient oversight and transparency to the U.S. AbilityOne Commission and the Federal customer. The new process creates incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DoD contracts with AbilityOne NPAs.

**Implementation Status:**
The Commission should update its regulations- once the draft policy is provided.
Panel Recommendation 12: Establish penalties if a CNA or NPA does not follow policies and procedures.

Background:
The implementation for recommendation 12 was led by the Panel’s subcommittee six, Acquisition and Procurement.

Section 898(c)(6) – recommend ways the DoD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Subcommittee six considered options to penalize a CNA or NPA for noncompliance policies and procedures, but determined that the executed Cooperative Agreements with the CNAs met this requirement. If a CNA does not meet its performance metrics in its Cooperative Agreements, the agreed-to Ceiling Fee set by the U.S. AbilityOne Commission may be reduced.

Specifically, the Commission has incorporated penalties for not following policies and procedures within the Cooperative Agreements established with the CNAs. The Quality Assurance Surveillance Plan (QASP), incorporated within the Cooperative Agreements, outlines key performance indicators (KPIs) and metrics that must be met. CNAs that do not comply with these KPIs will receive an unsatisfactory score for the measure in question, and may potentially have a reduction in their Program Fee Ceiling, which will impact the amount of fee collected from contracts awarded throughout the year.

If NPAs do not comply with Direct Labor Hour ratio requirements, the Commission will place the NPAs on probation and allow them the opportunity to brief the Commission on their corrective action plan. If the NPAs fails to comply with the corrective action plan, they can be removed from the AbilityOne Program.

The CNA Corrective Actions/Penalties currently in place (Ref. SourceAmerica Four Step Process) are:

- Consider probation and/or removal from AbilityOne Program for total direct labor hours below 75 percent;
- Consider different penalties between NPAs and CNAs;
- Consider normal FAR penalties for default (i.e.: cure notice, show cause letter, termination, etc.).

The Commission’s mechanism for enforcing policies and procedures is the Cooperative Agreement and QASP, including four KPIs: (1) Employment Growth, (2) AbilityOne Program Administration, Oversight, and Integrity, (3) NPA Support, Assistance, and Development, and (4) Training and Strategic Communications.
The Commission discusses Semi-Annual Performance Reviews with CNAs and the impact of performance on Program Fee determination.

Currently, DoD contracts in the AbilityOne Program do not require that the JWOD statute or 41 CFR 51 requirements are incorporated into the resultant contract, which makes it difficult to mandate NPA compliance with the unique requirements of the AbilityOne Program. This results in the U.S. AbilityOne Commission not having the authority to penalize the NPAs for non-compliance with policies and procedures.

**Implementation Status:**
To fully implement this recommendation 12, the subcommittee recommended and the Panel concurred, to develop Defense FAR Supplement (DFARS) language to mandate the implementation of the statutory and regulatory requirements in contract provisions, which would be required by the regulations to be included in the contract. Such regulatory implementation would enforce the requirement for compliance by the NPAs.

The DFARS language should include language that mandates implementing the JWOD statute and corresponding CFR language in DoD AbilityOne contracts. The Defense Acquisition Regulations Council (DARC) cannot open a DFARS Case to create this language until 41 CFR 51 is updated in accordance with Recommendation 14. It is estimated it will take 24 months after the update to the CFR that the DFARS Case may be fully executed.

Once the 41 CFR 51 final rule is published, the Commission should work with OUSD(A&S)/DPC to submit a request to the DARC for a DFARS case to be opened.
**Recommendation 14:** Revise 41 CFR 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the Procurement List.

**Background:**
The implementation for recommendation 14 was led by the Panel’s subcommittee six, Acquisition and Procurement.

Section 898(c)(6) – recommend ways the DoD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Subcommittee six researched CFR §51-5.2 Mandatory Source Requirement and determined it is broad and includes the Commission’s authority to designate authorized sources, but it does not address un-designation/de-authorization. The CFR language regarding disputes is also broad, but includes involving the CNA and/or Commission when a dispute cannot be resolved. Any pricing issues follow the Commission’s policy on Pricing Impasses, Commission Policy 51.640, which requires a pricing dispute to be brought to the Commission because the Commission by statute (CFR §51-5.5) has the exclusive authority to set the Fair Market Price.

Subcommittee six worked with the U.S. AbilityOne Commission to develop a proposed rule for revisions to 41 CFR 51 (RIN 3037-AA14) as referenced in the Commission’s Semiannual Regulatory Agenda published in the Federal Register on August 26, 2020 (85 FR 52761). The revised 41 CFR 51 will clarify the authority of the U.S. AbilityOne Commission to un-designate CNAs and to de-authorize NPAs on the Procurement List.

The proposed rule identifies maximum contract performance periods of ten years, before performing market analysis for potential recompetition, for service contracts with the same NPA that exceed an annual value of $10 million. In addition, the revised CFR will establish protections for employees with disabilities transferring between NPAs based on the results of recompetition.

**Implementation Status:**
The AbilityOne Commission should issue regulations to implement this proposed rule.
**Recommendation 16:** Deploy an IT solution either utilizing a system where the Procurement List (PL) can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues.

**Background:**
The implementation for recommendation 16 was led by the Panel’s subcommittee seven, Business Process Re-engineering.

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DoD compliance with regulations for use of the Procurement List.

The subcommittee learned that there is currently no connection between the PL and the DoD contract writing systems. The subcommittee’s initial research focused on reviewing information about DoD’s portfolio approach to electronic contract writing systems used by acquisition professionals, and is captured questions regarding how the PL information can be integrated or made available to the systems’ users most efficiently. The ongoing consolidation and modernization of existing systems at the Federal level will facilitate this objective. The PLIMS interface tool described in Recommendation 15 was sufficiently developed in FY 2021 to support demonstrations and discussions with the OUSD(A&S)/DPC Contracting eBusiness team.

In June 2021, subcommittee seven met with the DPC Contracting eBusiness team to determine greater inclusion of/or connectivity to PL data that will facilitate DoD purchases that are consistently compliant with FAR Subpart 8.7. The team discussed incorporating AbilityOne product data and information into the FedMall platform and into authorized distributor catalogs to maximize the visibility of AbilityOne products for purchase.

**Implementation Status:**
Continue the discussions between the Commission and DPC. Develop a timeline to train customers on the PLIMS interface tool. Budget for improvements to the PLIMS to support connectivity to DoD systems.
**Recommendation 17:** Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers.

**Background:**
The implementation for recommendation 17 was led by the Panel’s subcommittee seven, Business Process Re-engineering.

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DoD compliance with regulations for use of the PL.

To take a whole of government approach on pricing, subcommittee seven consulted with OFPP about existing government wide databases and web-based tools. GSA uses a pricing tool called the Prices Paid Portal in the Acquisition Gateway System. The Commission confirmed the AbilityOne prices are included in the GSA Prices Paid Portal in the Acquisition Gateway. The subcommittee notes the Department of Labor has a website that provides wage determination rates applicable to Federal contracts under the Service Contract Act.

Subcommittee seven facilitated demonstration meetings between GSA’s Business Intelligence Branch of the Office of Customer Accounts and Research/Federal Acquisition Service and various AbilityOne stakeholders to increase familiarity with the data, tools and dashboards available to Federal users in the Acquisition Gateway. Barriers to existing tools’ effectiveness, such as inconsistent nomenclature for AbilityOne products and NPAs, have been identified for remedial action. Subcommittee seven also explored the creation of a unique code or identifier for AbilityOne contracts, and/or a dropdown menu for AbilityOne data fields, to standardize and allow the data to be consolidated. Standardizing the data in this capacity will enhance the effectiveness of price comparison tools because all relevant AbilityOne prices paid will be captured.

**Implementation Status:**
While the subcommittee completed its work for this recommendation, the Panel recommends the Commission continue to educate customers about the data and tools available, which fulfill the information needs without requiring additional resources to develop or maintain new systems. The Commission should continue to work with GSA to refine AbilityOne data accuracy, and may work with DAU to ensure the AbilityOne training includes information about existing government-wide pricing tools and databases.
**Recommendation 19:** Pursue DFARS Procedures, Guidance, and Information (PGI) language to detail how to do business with the AbilityOne Program.

**Background:**
The implementation for recommendation 19 was led by the Panel’s subcommittee seven, Business Process Re-engineering.

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DoD compliance with regulations for use of the PL.

To gather inputs for the PGI language, subcommittee seven solicited inputs from customers via the DAU website and engaged with the AbilityOne Representatives. The subcommittee established a PGI working group and drafted initial language.

**Implementation Status:**
The Commission staff should continue to work with the PGI working group to finalize the language that may be submitted to OUSD(A&S)/DPC for processing for the DFARS. Once the PGI is updated to incorporate the language, the Commission may work with DAU to update training and host a webinar about contracting with the AbilityOne Program.
**Recommendation 20:** Recommend change to allotted timeframe currently required by the Administrative Procedures Act (APA) when adding products or services to the PL.

**Background:**
The implementation for recommendation 20 was led by the Panel’s subcommittee seven, Business Process Re-engineering.

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DoD compliance with regulations for use of the PL.

Following the APA as required by the JWOD Act requires a 30-day initial notice and a 30-day final notice for public comments on additions to the PL, which adds more than 60 days to the total cycle time for new PL items. Subcommittee seven developed legislative language to shorten the 30-day final notice for public comments to 21 days.

Subcommittee seven provided the legislative language to subcommittee four to incorporate into the Panel’s legislative proposal. With this change, the Panel highlights that this will modernize the JWOD Act, and shorten the timelines for contract awards for customers.

**Implementation Status:**
While the Panel closed this recommendation with the legislative language included in Appendix F, the Commission may continue to evaluate data and factors that contribute to the length of the approval time for additions to the PL. Additionally, the Commission can pursue the use of IDIQ contract vehicles with customers for efficiency in contracting.
**Recommendation 22:** The AbilityOne Commission should adopt policies that support competitive wages, inclusive work settings, and opportunities for advancement of individuals with disabilities, such as regulations that eliminate the payment of subminimum wages in the AbilityOne program.

**Background:**
The implementation for recommendation 22 was led by the Panel’s subcommittee eight(a), Employment Initiatives, which was a team formed under subcommittee eight, Employment Initiatives and Veterans Eligibility.

Section 898(c)(3) – recommend actions the DoD and the Commission may take to ensure opportunities for employment of veterans with significant disabilities, and for employment of individuals who are blind or who have significant disabilities.

Subcommittee eight(a) developed a set of actions that ensures employment opportunities offered to individuals who are blind or who have significant disabilities are consistent with the individuals’ vocational rehabilitation needs and goals, with a process in place to document an employees’ informed choice and self-determinations are conducted at least annually by the AbilityOne qualified NPA employers. Previously, this recommendation focused on the use of case management as a technique to accomplish the objective as currently stated. This recommendation has been broadened to recognize that NPAs may employ various techniques to achieve the desired outcomes.

The U.S. AbilityOne Commission previously issued a declaration to the CNAs designated under the JWOD Act to call for the elimination of using Fair Labor Standards Act (FLSA) Section 14(c) special certificates to pay subminimum wages to workers who have significant disabilities for the work being performed on AbilityOne contracts. Further, the Commission published a Notice of Proposed Rulemaking on October 12, 2021, outlining the prohibition on payment of subminimum wages pursuant to FLSA Section 14(c) certificates, applicable to all AbilityOne contracts. The public comment period for this proposed rule will closed on December 12, 2021.

Based on input from the Department of Education and other experts, the Subcommittee recommended that the Commission adopt policies that support competitive wages, inclusive work settings, and opportunities for advancement of individuals with disabilities, such as regulations that eliminate the payment of subminimum wages in the AbilityOne Program. The Panel recommends that, not later than one year after the Panel sunsets, the Commission issue an updated policy that strengthens the criteria for NPAs to obtain initial qualification and to maintain qualification to implement this recommendation. This policy will apply to initial qualification requirements and should include a deadline for existing NPAs to include a demonstrated process by which those NPAs assess and document employees’ individualized goals and opportunities for advancement on an annual basis.

The recommended employment criteria that complement the Commission’s transition include guidelines established within the Rehabilitation Act, as amended by the Workforce Innovation Opportunity Act (WIOA), addressing at least minimum wage comparable to coworkers, in a
work setting that is inclusive of people with and without disabilities and that presents opportunities for advancement.

**Implementation Status:**
The Commission should continue with the recommended regulatory and policy changes to implement the Panel’s recommendation. The regulation and policy changes should be harmonized with the proposed legislative changes to the definitions, when enacted, in the JWOD Act.
**Recommendation 23:** Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies.

**Background:**
The implementation for recommendation 23 was led by the Panel’s subcommittee eight(a), titled Employment Initiatives, which was a team formed under subcommittee eight, Employment Initiatives and Veterans Eligibility.

Section 898(c)(3) – recommend actions the DoD and the Commission may take to ensure opportunities for employment of veterans with significant disabilities, and for employment of individuals who are blind or who have significant disabilities.

Following the submission of the Panel’s third annual report to Congress and as outlined in the report, subcommittee eight(a), Employment Initiatives, focused on three initiatives to develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, to include veterans. The three focus areas for the subcommittee eight(a) were the Commission’s Veterans Apprenticeship Program, the Department of Labor (DoL) Office of Disability and Employment Program (ODEP) National Expansion of Employment Opportunities Network (NEON) Initiative, and finally, working with DoL - VETS in the development of a Program of Instruction (POI) for separating wounded, ill, and injured service members.

The Commission Director of Veterans Employment and Initiatives (DVEI) worked closely with the Center for Business Acceleration (CBA) over the last three years to develop and implement an apprenticeship program available to veterans and other individuals with significant disabilities through certain AbilityOne qualified nonprofit agencies. In January 2020, DoL approved CBA’s National Program Standard apprenticeships in Business Management, Occupational Health & Safety, Quality Management, and Risk Management. The COVID-19 pandemic significantly impacted the start of the apprenticeship program, but an inaugural apprentice class is scheduled to commence in February of 2022.

To assist in the implementation of the apprenticeship program with AbilityOne participating nonprofit agencies (NPAs), the Commission’s DVEI committed to inform and educate contacts at the Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E), DoD, Military Service Organizations, Veterans Services Organizations, AbilityOne Central Nonprofit Agencies (CNAs) and participating NPAs about the apprenticeship program and its participation requirements. Additionally, DVEI will provide general oversight of the apprenticeship program and act as a liaison between the organizations participating in its administration.

NEON is a relatively new DoL ODEP initiative that partners with national disability service provider organizations to meet their needs in the field and to offer the best employment options for all individuals with disabilities, including those with the most significant disabilities. Currently, nine NPAs in the AbilityOne Program are participating in the NEON initiative and additional NPAs will be invited to join in the initiative, specifically to develop employment positions that meet the definition of competitive integrated employment. A national plan to
increase competitive integrated employment is expected to be released in the next few months, outlining recommendations for expanding CIE options that include those developed through NEON. The principle focus of the NEON is to increase CIE opportunities for individuals with significant disabilities.

As recommended by Subcommittee eight(b), Veterans Eligibility (a team formed under subcommittee eight, Employment Initiatives and Veterans Eligibility) and discussed in the Panel’s third annual report to Congress, DVEI assisted DoL-VETS in the review of a POI for separating wounded, ill, and injured service members. DVEI reviewed the Transition and Assistance Program (TAP) Wounded, Ill and Injured Module – Employment Protections and Self Advocacy. More recently, DVEI reviewed the Wounded Warrior and Caregiver Employment Workshop (WWCEW) pilot test, which was a self-paced online module. As a result of this collaboration, information about AbilityOne employment opportunities will be included in the WWCEW Resource Guide, which will be available to the wounded, ill and/or injured transitioning population and their caregivers as part of the DoL TAP curriculum.

**Implementation Status:**
Subcommittee eight completed its work and the Panel concurred with having the Commission continue the implementation of the three focus areas developed by subcommittee eight(a).

The Commission will work with the CNAs, NPAs, DoL ODEP, and CBA beyond the Panel sunset. Discussions regarding the expansion of CIE opportunities will continue in a whole of Government capacity. However, the three initiatives above demonstrate and contribute to the CIE opportunities available to veterans and other individuals with significant disabilities.
**Recommendation 24:** Modify the Individual Eligibility Evaluation (IEE) process to enhance the analysis of meeting the criteria for blindness and/or significant disability and the certification of results.

**Background:**
The implementation for recommendation 24 was led by the Panel’s subcommittee eight(a), titled Employment Initiatives, which was a team formed under subcommittee eight, Employment Initiatives and Veterans Eligibility.

Section 898(c)(3) – recommend actions the DoD and the Commission may take to ensure opportunities for employment of veterans with significant disabilities, and for employment of individuals who are blind or who have significant disabilities.

Currently, for evaluating a person with a significant disability, the evaluator must be a person or persons qualified by training and experience to assess the work potential, interests, aptitudes, and abilities of persons with disabilities.

AbilityOne Program Compliance Policy governs the IEE certification/validation process; some of the larger NPAs have formal training, certification, and validation programs for their employees who complete the IEE process, while others do not. Most of the smaller NPAs do not have sufficient training for personnel in order to establish a formal training, certification, and validation program, although the employees typically complete informal training. There is a need to develop a standardized process for employee training on the IEE certification/evaluation process that lends itself to program-wide compliance with Commission requirements.

In 2021, the subcommittee presented to the Panel a recommendation for the Commission to build into the Cooperative Agreement the requirement for CNAs to establish a certificate-based training program for individuals verifying the IEE.

Subcommittee eight(a) identified the need to revisit the IEE form to include changing the definition and terminology, identifying a suitable name for the form, and establishing a more meaningful form for the evaluation of the individual’s competitive employability and documented condition(s) meeting the criteria for blindness and/or significant disability. The form should not be revised until the modernized definitions developed by subcommittee four are approved.

The subcommittee also recommended to the Panel, and the Panel concurred, that the Commission Compliance Review Policy require qualifying NPAs to maintain an Individualized Plan for Employment (IPE). The IPE would be a written plan that identifies AbilityOne Program employee employment outcomes, referred to as employment goals, the services provided to achieve the employment goals, and the requirement for the CNAs to measure progress toward the employment goals during compliance reviews of the IEE process on an annual basis.
Implementation Status:
To fully implement the Panel’s recommendation, the Commission should continue to work on publishing the IEE policy, and update the Cooperative Agreements once the policy is issued. Additionally, the Commission should continue its efforts to develop a certificate-based training program and adopt a standardized form approved by the Office of Personnel Management.
Mini-Report

from the

Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity

for the

Office of the Under Secretary of Defense
Defense Acquisition University

December 2021
Panel Request
The Panel requests that the Defense Acquisition University (DAU) continually work with the U.S. AbilityOne Commission to update existing AbilityOne training learning assets for the DoD acquisition workforce and to develop new training aides, as needed, and as described below in Panel recommendation two.

Introduction
Section 898, of the National Defense Authorization Act (NDAA) for FY 2017, (Public Law 114-328) required the Secretary of Defense to establish the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity” (“the Panel”). The primary mission of the Panel was to identify vulnerabilities in Department of Defense (DoD) contracting with the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established subcommittees to align with the statutory duties as required by section 898(c). In accordance with section 898(j), the Panel sunsets with the submission of the final Report to Congress. The Panel submitted its fourth and final Report to Congress in December 2021.

At the time of the Panel sunset, there were 11 recommendations in various phases of implementation that require more time for full implementation due to, for example, the update to the Commission’s regulations, which must go through the Federal rulemaking process. To continue the positive work of the Panel, the Panel’s final Report to Congress includes this mini-report for DAU to take the lead and work with the U.S. AbilityOne Commission to continually update relevant AbilityOne Program training available to the DoD and Federal workforce.

Panel Recommendation for DAU

Recommendation 2: U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented.

Background:
The implementation for recommendation two was overseen by the Panel’s subcommittee one, Inspector General.

Section 898, of the NDAA for FY 2017, (Public Law 114-328) requires the Panel to establish a more comprehensive AbilityOne training program at DAU. The recommendation addresses section 898(c)(1) states – review implementation of the DoDIG report findings and recommendations; reference DoDIG Report 2016-097, published June 27, 2016, includes a recommendation to update training to clearly define the DoD Contracting Officer's roles and responsibilities when awarding contracts with the AbilityOne Program.
The Panel’s recommendation two was initially implemented through a memorandum signed by the Principal Director, DPC, on September 7, 2018. The memorandum created and implemented a policy mandating all personnel assigned to the DoD Contracting and Purchasing Acquisition Career Fields complete Continuous Learning Module (CLM) 023 “DAU AbilityOne Training” in FY 2019. At the time, the existing CLM 023 was updated in collaboration between DAU, the U.S. AbilityOne Commission, and the DoD OUSD(A&S) Contracting Workforce Functional Integration Team, chaired by the Principal Director, DPC, and deployed May 7, 2018. The updated training addresses section 898(l) to include specific information about the AbilityOne Program and the mission of the U.S. AbilityOne Commission. It also addresses the DoDIG recommendations to clearly articulate the roles and responsibilities of contracting officers when procuring from the AbilityOne nonprofit agencies, in accordance with the purchasing priorities of the FAR, Section 8.002 and Subpart 8.7.

**Implementation Status:**
In DoD’s October 2021 National Disability Employment Awareness Month (NDEAM) memorandum, contracting professionals and DoD ABORs are encouraged to complete CLM 023 to meet continuous learning requirements. The Panel recognizes DAU developed an update to the CLM 023 and requests that DAU work closely with the U.S. AbilityOne Commission to incorporate additional updates as further Panel recommendations are implemented by the U.S. AbilityOne Commission after the Panel sunsets.
Mini-Report

from the

Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity

for the

Office of the Under Secretary of Defense for Acquisition and Sustainment
Defense Pricing and Contracting

December 2021
Mini-Report from the  
Panel on Department of Defense and U.S. AbilityOne Contracting Oversight,  
Accountability, and Integrity  
for the  
Office of the Under Secretary of Defense for Acquisition and Sustainment 
Defense Pricing and Contracting

Panel Request
The Panel requests the Defense Pricing and Contracting (DPC) organization work with the U.S. AbilityOne Commission to fully implement the Panel’s recommendations 12 and 19 as described below.

Introduction
Section 898, of the National Defense Authorization Act for FY 2017, (Public Law 114-328) required the Secretary of Defense to establish the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity” (“the Panel”). The primary mission of the Panel was to identify vulnerabilities in Department of Defense (DoD) contracting with the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established subcommittees to align with the statutory duties as required by section 898(c). In accordance with section 898(j), the Panel sunsets with the submission of the final Report to Congress. The Panel submitted its fourth and final Report to Congress in December 2021.

At the time of the Panel sunset, there were 11 recommendations in various phases of implementation that require more time for full implementation due to, for example, the update to the Commission’s regulations, which must go through the Federal rulemaking process. To continue the positive work of the Panel, the Panel’s final Report to Congress includes this mini-report for DPC to work with the U.S. AbilityOne Commission on actions described below to fully implement recommendations 12 and 19.

Panel Recommendations for DoD

Recommendation 12: Establish penalties if a CNA or NPA does not follow policies and procedures.

Recommendation 19: Pursue DFARS (PGI language) to detail how to do business with the AbilityOne Program.
Panel Recommendation 12: Establish penalties if a CNA or NPA does not follow policies and procedures.

Background:
The implementation for recommendation 12 was led by the Panel’s subcommittee six, Acquisition and Procurement.

Section 898(c)(6) – recommend ways the DoD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Subcommittee six considered options to penalize a CNA or NPA for noncompliance policies and procedures, but determined that the executed Cooperative Agreements with the CNAs met this requirement. If a CNA does not meet their performance metrics in their Cooperative Agreements, the agreed-to Ceiling Fee set by the U.S. AbilityOne Commission may be reduced.

Specifically, the Commission has incorporated penalties for not following policies and procedures within the Cooperative Agreements established with the CNAs. The Quality Assurance Surveillance Plan (QASP), incorporated within the Cooperative Agreements, outlines key performance indicators (KPIs) and metrics that must be met. CNAs that do not comply will receive an unsatisfactory score for the measure in question, and may potentially have a reduction in their Program Fee Ceiling, which will impact the amount of fee collected from contracts awarded throughout the year.

If NPAs do not comply with Direct Labor Hour ratio requirements, the Commission will place the NPA on probation and allow them the opportunity to brief the Commission on their corrective action plan. If the NPAs fails to comply with the corrective action plan, they can be removed from the AbilityOne Program.

The CNA Corrective Actions/Penalties currently in place (Ref. SourceAmerica Four Step Process) are:

- Consider probation and/or removal from AbilityOne Program for total direct labor hours below 75 percent;
- Consider different penalties between NPAs and CNAs;
- Consider normal FAR penalties for default (i.e.: cure notice, show cause letter, termination, etc.).

The Commission’s mechanism for enforcing policies and procedures is the Cooperative Agreement and QASP, including four KPIs: (1) Employment Growth, (2) AbilityOne Program Administration, Oversight, and Integrity, (3) NPA Support, Assistance, and Development, and (4) Training and Strategic Communications.
The Commission discusses Semi-Annual Performance Reviews with CNAs and the impact of performance on Program Fee determination.

Currently, DoD contracts in the AbilityOne Program do not require that the JWOD statute or 41 CFR 51 requirements are incorporated into the resultant contract, which makes it difficult to mandate NPA compliance with the unique requirements of the AbilityOne Program. This results in the U.S. AbilityOne Commission not having the authority to penalize the NPAs for non-compliance with policies and procedures.

**Implementation Status:**
To fully implement this recommendation 12, the subcommittee recommended and the Panel concurred, to develop DFARS language to mandate the implementation of the statutory and regulatory requirements in contract provisions, which would be required by the regulations to be included in the contract. Such regulatory implementation would enforce the requirement for compliance by the NPAs.

The DFARS language should include language that mandates implementing the JWOD statute and corresponding CFR language in DoD AbilityOne contracts. The Defense Acquisition Regulations Council (DARC) cannot open a DFARS Case to create this language until 41 CFR 51 is updated in accordance with Recommendation 14. It is estimated it will take 24 months after the update to the CFR that the DFARS Case may be fully executed.

Once the 41 CFR 51 final rule is published, the Commission should work with OUSD(A&S)/DPC to submit a request to the DARC for a DFARS case to be opened.
**Recommendation 19:** Pursue DFARS Procedures, Guidance, and Information (PGI) language to detail how to do business with the AbilityOne Program.

**Background:**
The implementation for recommendation 19 was led by the Panel’s subcommittee seven, Business Process Re-engineering.

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DoD compliance with regulations for use of the PL.

To gather inputs for the PGI language, subcommittee seven solicited inputs from customers via the DAU website and engaged with the AbilityOne Representatives. The subcommittee established a PGI working group and drafted initial language.

**Implementation Status:**
The Commission staff should continue to work with the PGI working group to finalize the language that may be submitted to OUSD(A&S)/DPC for processing for the Defense Federal Acquisition Regulation Supplement. Once the PGI is updated to incorporate the language, the Commission may work with DAU to update training and host a webinar about contracting with the AbilityOne Program.
Appendix A
MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT

FROM: JEFFREY A. KOSES, CHAIRPERSON


The Panel has created enduring value for AbilityOne and for Americans who are blind or have significant disabilities. We greatly appreciate DoD’s leadership, engagement with stakeholders, and handling of complex issues over the past four years, and their preparation and management of this final report. The final report provides a launch pad for action by providing clear and actionable tasks and specific recommendations on needed legislative changes. The structure of mini-reports for the Commission; Defense Acquisition University; and the Office of the Undersecretary of Defense for Acquisition and Sustainment, Defense Contracting and Pricing will aid the Commission in tracking and measuring progress.

The Commission will continue to work with the community of interested federal agencies to recommend line-in/line-out edits to the Javits-Wagner-O’Day (JWOD) Act to amend the statutory direct labor ratio and the definition of disability for the Program.

Over the last year, the Commission made significant progress increasing oversight, updating policies, and issuing a proposed rule to address wage disparity. It actively participated in the Panel and made strong contributions to the teams.

We strongly concur with the Panel’s finding that the Agency requires additional resources to effectively execute its oversight of the AbilityOne Program — a conclusion also reached in reports from the Government Accountability Office (GAO Report GAO-13-457) and Commission’s Office of Inspector General (OIG).

Currently, the Commission has only 38 FTEs to administer a nearly $4 billion program employing more than 42,000 people who are blind or have significant disabilities at approximately 500 nonprofit agencies operating across all 50 U.S. states, Puerto Rico and Guam.
Over the past year, and consistent with its work toward implementing Panel recommendations, the Commission has made substantial progress in improving stewardship, increasing transparency, and laying the groundwork to support a significant increase in the number of people who are blind or have significant disabilities working on contracts awarded through the Program. The growth in jobs will require ongoing increases in the Commission budget to ensure appropriate and effective oversight.

Recent increases in appropriations have enabled the Commission to begin to address areas of longstanding concern, and Congressional mandates over the past few years have brought needed new controls to the Program. However, the mandates have not been accompanied with funding sufficient to carry them out.

The Commission recognizes its responsibility to increase its oversight to meet the demands posed by anticipated Program growth as a result of the Office of Federal Procurement Policy memorandum on "Increasing the Participation of Americans with Disabilities in Federal Contracting."

As an example of the need to increase Commission resources to provide additional oversight: In December 2020, DoD pledged to grow its AbilityOne spend “from .55% to 1% over the next 5 years to match DoD’s mission needs with AbilityOne capabilities to grow employment and career opportunities for disabled Americans and wounded warriors.” If this increase is fully realized, it will nearly double the number of individuals who are blind or have significant disabilities employed through the Program. It is important for the Commission to invest in adequate oversight to ensure the Program delivers for these people.

The Commission continues to support the recommendation to permit competition within the Program. The Commission’s first competition pilot test, completed in 2019, resulted in savings to the Army as part of the Commission’s effort to develop a path to improving contractor performance while simultaneously achieving cost savings for Federal customers. However, the second pilot test ended in May 2021 when the Court of Federal Claims issued an injunction to stop it, in response to a bid protest challenging the Commission’s authority to conduct the pilot test. The Commission is currently considering next steps to strengthen its authority in this area.

The competition pilots severely strained the Commission’s resources, limiting its ability to meet the needs of Federal customers. The Commission has worked with the Panel to explore alternative approaches to future competitions, and will continue its efforts.

The Commission is particularly grateful for the outstanding leadership of the Panel Chairman, Mr. John Tenaglia, Principal Director, Defense Pricing and Contracting, in the Office of the Secretary of Defense, and to Ms. Susan Pollack for her leadership and drive to excellence. During his time as the Panel’s head, Mr. Tenaglia continued his predecessors’ robust communication and outreach to the nonprofit community, ensuring that engagement and transparency remained central to the Panel activities. With his participation, the Panel’s virtual tours of nonprofit agencies became more valuable channels for information exchange.
In the past year, the Commission made major strides toward implementing prioritized recommendations of the Panel. While the Panel’s term may be ending, the Commission will continue to build on the foundation created by the Panel, benefit from the Panel’s work and expertise, and continue the process of implementing recommendations that will ensure and enhance the AbilityOne Program’s continued value to DoD and other federal agencies.

Sincerely,

Jeffrey A. Koses
Chairperson and Presidential Appointee
Appendix B
ation Research Program or Small Business Technology Transfer Program for the pilot program under this section shall be considered to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

“(d) DISCRETION TO USE NON-CERTIFIED ACCOUNTING SYSTEMS.—In executing programs under this pilot program, the Secretary of Defense shall establish procedures under which a small business or nontraditional contractor may engage an independent certified public accountant for the review and certification of its accounting system for the purposes of any audits required by regulation, unless the head of the agency determines that this is not appropriate based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

“(e) GUIDANCE AND TRAINING.—The Secretary of Defense shall ensure that acquisition and auditing officials are provided guidance and training on the flexible use and tailoring of authorities under the pilot program to maximize efficiency and effectiveness.”

SEC. 897. RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.

Section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), as amended by section 864 of this Act, is further amended—

(1) in the subsection heading, by striking “FUND” and inserting “FUNDS”;

(2) in paragraph (1), by striking “IN GENERAL.—The Secretary” and inserting the following: “DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

“(A) IN GENERAL.—The Secretary”;

(3) by redesignating paragraphs (2) and (3) as subparagraphs (B) and (C), respectively, and moving such subparagraphs, as so redesignated, two ems to the right;

(4) in subparagraph (B), as redesignated by paragraph (3), by striking “this subsection” and inserting “this paragraph”;

(5) by inserting after paragraph (1) the following new paragraph:

“(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.”.

SEC. 898. ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY UNIVERSITY TRAINING.

(a) ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY.—

(1) IN GENERAL.—The Secretary of Defense shall establish a panel to be known as the “Panel on Department of Defense
and AbilityOne Contracting Oversight, Accountability, and Integrity” (hereafter in this section referred to as the “Panel”). The Panel shall be supported by the Defense Acquisition University, established under section 1746 of title 10, United States Code, and the National Defense University, including administrative support.

(2) COMPOSITION.—The Panel shall be composed of the following:

(A) A representative of the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the chairman of the Panel.

(B) A representative from the AbilityOne Commission.

(C) A representative of the service acquisition executive of each military department and Defense Agency (as such terms are defined, respectively, in section 101 of title 10, United States Code).

(D) A representative of the Under Secretary of Defense (Comptroller).


(G) The President of the Defense Acquisition University, or a designated representative.

(H) One or more subject matter experts on veterans employment from a veterans service organization.

(I) A representative of the Commission Directorate of Veteran Employment of the AbilityOne Commission whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the AbilityOne Commission.

(J) One or more representatives from the Department of Justice who are subject matter experts on compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission.

(K) One or more representatives from the Department of Justice who are subject matter experts on Department of Defense contracts, Federal Prison Industries, and the requirements of the Javits-Wagner-O'Day Act.

(L) Such other representatives as may be determined appropriate by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) MEETINGS.—The Panel shall meet as determined necessary by the chairman of the Panel, but not less often than once every three months.

(c) DUTIES.—The Panel shall—

(1) review the status of and progress relating to the implementation of the recommendations of report number DODIG-2016-097 of the Inspector General of the Department of Defense titled “DoD Generally Provided Effective Oversight of AbilityOne Contracts”, published on June 17, 2016;

(2) recommend actions the Department of Defense and the AbilityOne Commission may take to eliminate waste, fraud,
and abuse with respect to contracts of the Department of Defense and the AbilityOne Commission;

(3) recommend actions the Department of Defense and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and the blind and other severely disabled individuals;

(4) recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of contracts of the Department of Defense;

(5) recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that considers the definitions of disability used by the Secretary of Veterans Affairs and the AbilityOne Commission;

(6) recommend ways the Department of Defense and the AbilityOne Commission may explore opportunities for competition among qualified nonprofit agencies or central nonprofit agencies and ensure an equitable selection and allocation of work to qualified nonprofit agencies;

(7) recommend changes to business practices, information systems, and training necessary to ensure that—

(A) the AbilityOne Commission complies with regulatory requirements related to the establishment and maintenance of the procurement list established pursuant to section 8503 of title 41, United States Code; and

(B) the Department of Defense complies with the statutory and regulatory requirements for use of such procurement list; and

(8) any other duties determined necessary by the Secretary of Defense.

(d) CONSULTATION.—To carry out the duties described in subsection (c), the Panel may consult or contract with other executive agencies and with experts from qualified nonprofit agencies or central nonprofit agencies on—

(I) compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission;

(2) employment of significantly disabled veterans; and

(3) vocational rehabilitation.

(e) AUTHORITY.—To carry out the duties described in subsection (c), the Panel may request documentation or other information needed from the AbilityOne Commission, central nonprofit agencies, and qualified nonprofit agencies.

(f) PANEL RECOMMENDATIONS AND MILESTONE DATES.—

(1) MILESTONE DATES FOR IMPLEMENTING RECOMMENDATIONS.—After consulting with central nonprofit agencies and qualified nonprofit agencies, the Panel shall suggest milestone dates for the implementation of the recommendations made under subsection (c) and shall notify the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, qualified nonprofit agencies, and central nonprofit agencies of such dates.
(2) Notification of Implementation of Recommendations.—After the establishment of milestone dates under paragraph (1), the Panel may review the activities, including contracts, of the AbilityOne Commission, the central nonprofit agencies, and the relevant qualified nonprofit agencies to determine if the recommendations made under subsection (c) are being substantially implemented in good faith by the AbilityOne Commission or such agencies. If the Panel determines that the AbilityOne Commission or any such agency is not implementing the recommendations, the Panel shall notify the Secretary of Defense, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

(g) Remedies.—

(1) In general.—Upon receiving notification under subsection (f)(2) and subject to the limitation in paragraph (2), the Secretary of Defense may take one of the following actions:

(A) With respect to a notification relating to the AbilityOne Commission, the Secretary may suspend compliance with the requirement to procure a product or service in section 8504 of title 41, United States Code, until the date on which the Secretary notifies Congress, in writing, that the AbilityOne Commission is substantially implementing the recommendations made under subsection (c).

(B) With respect to a notification relating to a qualified nonprofit agency, the Secretary may terminate a contract with such agency that is in existence on the date of receipt of such notification, or elect to not enter into a contract with such agency after such date, until the date on which the AbilityOne Commission certifies to the Secretary that such agency is substantially implementing the recommendations made under subsection (c).

(C) With respect to a notification relating to a central nonprofit agency, the Secretary may include a term in a contract entered into after the date of receipt of such notification with a qualified nonprofit agency that is under such central nonprofit agency that states that such qualified nonprofit agency shall not pay a fee to such central nonprofit agency until the date on which the AbilityOne Commission certifies to the Secretary that such central nonprofit agency is substantially implementing the recommendations made under subsection (c).

(2) Limitation.—If the Secretary of Defense takes any of the actions described in paragraph (1), the Secretary shall coordinate with the AbilityOne Commission or the relevant central nonprofit agency, as appropriate, to fully implement the recommendations made under subsection (c). On the date on which such recommendations are fully implemented, the Secretary shall notify Congress, in writing, and the Secretary’s authority under paragraph (1) shall terminate.

(h) Progress Reports.—

(1) Consultation on Recommendations.—Before submitting the progress report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on draft
recommendations made pursuant to subsection (c). The Panel shall include any recommendations of the AbilityOne Commission in the progress report submitted under paragraph (2).

(2) PROGRESS REPORT.—Not later than 180 days after the date of the enactment of this Act, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a progress report on the activities of the Panel.

(i) ANNUAL REPORT.—

(1) CONSULTATION ON REPORT.—Before submitting the annual report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on the contents of the report. The Panel shall include any recommendations of the AbilityOne Commission in the report submitted under paragraph (2).

(2) REPORT.—Not later than September 30, 2017, and annually thereafter for the next three years, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes

(A) a summary of findings and recommendations for the year covered by the report;

(B) a summary of the progress of the relevant qualified nonprofit agencies or central nonprofit agencies in implementing recommendations of the previous year’s report, if applicable;

(C) an examination of the current structure of the AbilityOne Commission to eliminate waste, fraud, and abuse and to ensure contracting integrity and accountability for any violations of law or regulations;

(D) recommendations for any changes to the acquisition and contracting practices of the Department of Defense and the AbilityOne Commission to improve the delivery of goods and services to the Department of Defense; and

(E) recommendations for administrative safeguards to ensure the Department of Defense and the AbilityOne Commission are in compliance with the requirements of the Javits-Wagner-O’Day Act, Federal civil rights law, and regulations and policy related to the performance of contracts of the Department of Defense with qualified nonprofit agencies and the contracts of the AbilityOne Commission with central nonprofit agencies.

(j) SUNSET.—The Panel shall terminate on the date of submission of the last annual report required under subsection (i).

(k) INAPPLICABILITY OF FACA.—The requirements of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel established pursuant to subsection (a).

(l) DEFENSE ACQUISITION UNIVERSITY TRAINING.—

(1) IN GENERAL.—The Secretary of Defense shall establish a training program at the Defense Acquisition University estab-
lished under section 1746 of title 10, United States Code. Such training shall include—

(A) information about—

(i) the mission of the AbilityOne Commission;

(ii) the employment of significantly disabled veterans through contracts from the procurement list maintained by the AbilityOne Commission;

(iii) reasonable accommodations and accessibility requirements for the blind and other severely disabled individuals; and

(iv) Executive orders and other subjects related to the blind and other severely disabled individuals, as determined by the Secretary of Defense; and

(B) procurement, acquisition, program management, and other training specific to procuring goods and services for the Department of Defense pursuant to the Javits-Wagner-O'Day Act.

(2) ACQUISITION WORKFORCE ASSIGNMENT.—Members of the acquisition workforce (as defined in section 101 of title 10, United States Code) who have participated in the training described in paragraph (1) are eligible for a detail to the AbilityOne Commission.

(3) ABILITYONE COMMISSION ASSIGNMENT.—Career employees of the AbilityOne Commission may participate in the training program described in paragraph (1) on a non-reimbursable basis for up to three years and on a non-reimbursable or reimbursable basis thereafter.

(4) FUNDING.—Amounts from the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, are authorized for use for the detail of members of the acquisition workforce to the AbilityOne Commission.

(m) DEFINITIONS.—In this section:

(1) The term “AbilityOne Commission” means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41, United States Code.

(2) The terms “blind”, “qualified nonprofit agency for the blind”, “qualified nonprofit agency for other severely disabled”, and “severely disabled individual” have the meanings given such terms under section 8501 of such title.

(3) The term “central nonprofit agency” means a central nonprofit agency designated under section 8503(c) of such title.

(4) The term “executive agency” has the meaning given such term in section 133 of such title.

(5) The term “Javits-Wagner-O'Day Act” means chapter 85 of such title.

(6) The term “qualified nonprofit agency” means—

(A) a qualified nonprofit agency for the blind; or

(B) a qualified nonprofit agency for other severely disabled.

(7) The term “significantly disabled veteran” means a veteran (as defined in section 101 of title 38, United States Code) who is a severely disabled individual.
licit accountant for the review and certification of its accounting sys-
tem for the purposes of any audits required by this section.

The House amendment contained no similar provision.

The House recedes with an amendment that would include au-
diting officials in the list of personnel who are provided guidance
and training on the flexible use and tailoring of authorities under
the pilot program.

Rapid prototyping funds for the military departments (sec. 897)

The Senate bill contained a provision (sec. 899A) that would
amend section 804(d) of the National Defense Authorization Act for
Fiscal Year 2016 (Public Law 114–92) to authorize the Secretary of
the Army, Navy, and Air Force each to establish service-specific
funds for acquisition programs under the rapid fielding and proto-
typing pathways established in this section.

The House amendment contained no similar provision.

The House recedes.

Establishment of Panel on Department of Defense and AbilityOne
Contracting Oversight, Accountability, and Integrity; Defense
Acquisition University training (sec. 898)

The Senate bill contained a provision (sec. 829H) that would
prohibit the Secretary of Defense from arranging contracts through
AbilityOne, or its central non-profit agency, SourceAmerica, and in-
stead require the Secretary to contract directly with qualified non-
profit agencies for the severely disabled until the Department of
Defense (DOD) Inspector General conducted a review and certified
the effectiveness of the internal controls and financial management
of AbilityOne and SourceAmerica.

The House amendment contained no similar provision.

The House recedes with an amendment that would establish a
panel on DOD and AbilityOne contracting oversight, accountability,
and integrity to review and address the effectiveness and internal
controls of the program related to DOD contracts.

Coast Guard major acquisition programs (sec. 899)

The House amendment contained a provision (sec. 835) that
would amend section 56(c) of title 14, United States Code, to direct
the Chief Acquisitions Officer of the Coast Guard to inform the
Commandant of developments in major acquisition programs that
have new or revisited trade-offs between costs, scheduling, feasi-
bility, and performance. This section also would amend chapter 15
of title 14, United States Code, to clarify the role of the Acquisition
Directorate in ensuring that the needs of customers in major acqui-
sition programs are met in the most cost-effective manner prac-
ticable. The Vice Commandant of the Coast Guard would be re-
ponsible for representing the operating field units and would serve
an advisory role to the Commandant for major acquisition pro-
grams. The customer of a major acquisition program would be spec-
ified as the operating field unit that would field the acquired sys-
tem and “major acquisition program” would be defined as a pro-
gram with a life-cycle cost estimate of $300.0 million or more.

This section also would prohibit the Commandant of the Coast
Guard from awarding a contract for the design of an unmanned
Appendix C
U.S. AbilityOne Commission

Regional Field Office Locations, Number of Nonprofit Agencies (NPAs), and AbilityOne Sales by State and Region Based on FY 2020 Data. National Totals: 470 NPAs, $3.9 Billion in Sales.

NOTE: This map includes the regions originally described in the Commission’s FY 2017 Congressional Budget Justification. Sales figures do not necessarily reflect actual in-state sales because they are based on HQ locations of NPAs which may have out-of-state sales. Sales figures are rounded.
Appendix D
MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: 2021 National Disability Employment Awareness Month and the AbilityOne® Program

Each year, the President signs a proclamation in observance of National Disability Employment Awareness Month (NDEAM). This year’s Federal NDEAM theme, “America’s Recovery: Powered by Inclusion,” focuses on an inclusive recovery from the COVID-19 pandemic by providing full access to employment and career opportunities for individuals with disabilities, who have historically experienced the lowest employment rate of any segment of the U.S. labor force.

Observed each October, NDEAM is a chance to recognize the talents and skills of the workers in the AbilityOne Program, which is the largest source of employment for individuals who are blind or have significant disabilities. The AbilityOne employees are a vital segment of our defense workforce and contribute to military readiness in many ways, to include: producing uniforms worn by our Armed Forces, operating more than 150 Base Supply Centers, providing food services at base installation dining facilities, performing administrative contract closeout services, and proudly cleaning the Pentagon Memorial Chapel.

The Department of Defense (DoD) continues to be the lead customer of the AbilityOne Program, procuring more than $2.1 billion of products and services in FY 2021. Today, nearly 35,000 individuals who are blind or have significant disabilities perform work on DoD contracts with 500 community-based nonprofit agencies (NPAs) across the country. Approximately 7,000 veterans work at the AbilityOne NPAs, including 3,000 wounded, ill, or injured veterans who fill direct labor jobs. In addition, AbilityOne NPAs employ 4,000 veterans working in indirect labor positions, including supervisory and management roles.

The DoD contracting and purchasing workforce supports the AbilityOne employment mission through the procurement of products and services in compliance with the Federal
Acquisition Regulation (FAR) subpart 8.7. Since the beginning of the pandemic, DoD contracting professionals have processed 899 contract actions valued at $84 million with the AbilityOne NPAs. These companies increased surge capacity to manufacture and deliver critical products and maintain essential services to support the ongoing COVID-19 national emergency response. An AbilityOne participating NPA increased production of hand sanitizers from 1.2 million bottles annually to 13 million. Employees who are blind and visually impaired, or who have significant disabilities, are sewing and delivering high-demand Personal Protective Equipment items, such as masks and gowns. AbilityOne workers continue to be on the front lines of defense to keep buildings and military hospitals clean and operational.

The acquisition workforce is critical to expanding business with the AbilityOne Program by identifying new product lines and services to add to the AbilityOne Procurement List. There are a number of recommendations implemented by the 898 Panel on DoD and AbilityOne Contracting Oversight, Accountability, and Integrity, which will assist the acquisition workforce in doing business with the AbilityOne Program.

- During NDEAM last year, DoD established an AbilityOne Representative (ABOR) Program. Over the past year, the Component ABORs have been developing strategic plans based on a data driven approach and a procurement pledge for growth in AbilityOne Program participation. The ABOR Program was recognized as one of ten initiatives implementing Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” in the Defense Equity Team report to the White House, “Department of Defense 200-Day Equity Assessment Progress Report, Advancing Racial Equity and Support for Underserved Communities.”

- In the area of training, DAU is deploying a comprehensive update to the Continuous Learning Module (CLM) 023, “DAU AbilityOne Training,” by the end of October. Contracting professionals and ABORs are encouraged to complete CLM 023 to meet continuous learning requirements. Additionally, the U.S. AbilityOne Commission is developing several training documents and information sheets targeted to meet the varying needs of customers. It is anticipated these training aides will be posted to the AbilityOne and DAU websites by May 2022.

- An update to the Procurement List Information Management System has resulted in detailed information available on AbilityOne products and services, and an improved Procurement List search function for customers.

- On August 11, 2021, the final rule for the FAR, Section 508-Based Standards in Information and Communication Technology (ICT), was published in the Federal Register to align FAR language to the updated accessibility standards issued by the U.S. Access Board. Consistent with FAR Subpart 39.2, which implements section 508 of the Rehabilitation Act of 1973, as amended, requirements and contracting officials should review solicitation documents to confirm that the section 508 standards are appropriately considered and clearly stated in ICT.
acquisitions. It is critical that the total acquisition workforce comply with the accessibility requirements of section 508 in order for employees who are blind or visually impaired to work in knowledge-based jobs. Section 508 information and training may be viewed at https://www.section508.gov/.

During NDEAM, we express appreciation to the AbilityOne employees for their dedication to meeting DoD mission needs. I also commend the DoD contracting workforce and ABORs for their leadership in facilitating new prime contract opportunities with the AbilityOne Program. Through our team effort, veterans and individuals who are blind or have significant disabilities will have a greater opportunity to work, lead independent lives, and contribute to the economic strength at the national, state, and local levels.

My senior staff lead for AbilityOne procurement policy is Ms. Susan Pollack who may be contacted at 571-309-8525 or susan.w.pollack.civ@mail.mil.

Sincerely,

TENAGLIA.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting
Appendix E
July 14, 2021

The Honorable John Tenaglia  
Chairman  
Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity  
Principal Director, Defense Pricing and Contracting  
U.S. Department of Defense  
3060 Defense Pentagon  
Room 3B938  
Washington, DC 20301-3060

Dear Mr. Tenaglia:

National Industries for the Blind (NIB) and three other organizations sent a joint letter regarding AbilityOne transformation to several congressional committee leaders this past spring, and we believed it was important to share it with you.

This letter was the result of unprecedented cooperation and coordination amongst the four principal private sector organizations representing nonprofit agencies that provide employment for individuals who are blind or significantly disabled through the AbilityOne Program: National Association for the Employment of People Who Are Blind (NAEPB); National Industries for the Blind (NIB); National Council of SourceAmerica Employers (NCSE); and SourceAmerica.

This letter to key committees in Congress highlights six areas of agreement that we believe would help to not just reform, but truly begin to transform the AbilityOne Program. While not exhaustive of all the issues that will need to be examined during any congressional hearings on the future of the AbilityOne Program, we believe this letter is a great start. We have been engaged with these congressional committees in follow-up calls with staff to discuss the priorities and answer questions.

I would be pleased to answer any questions you may have regarding the letter or any of the recommendations. I am also looking forward to presenting at next month’s 898 Panel session.

Thank you for all you do to support our mission of creating great jobs for people who are blind!

Sincerely,

Kevin A. Lynch  
President and CEO

Attachment: April 22, 2021, correspondence to Congress on AbilityOne
April 22, 2021

The Honorable Gary C. Peters  
Chair, Senate Committee on Homeland Security and Governmental Affairs  
724 Hart Senate Office Building  
Washington, DC 20510

The Honorable Rob Portman  
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs  
448 Russell Senate Office Building  
Washington, DC 20510

The Honorable Carolyn B. Maloney  
Chair, House Committee on Oversight and Reform  
2308 Rayburn House Office Building  
Washington, DC 20515

The Honorable James Comer  
Ranking Member, House Committee on Oversight and Reform  
2410 Rayburn House Office Building  
Washington, DC 20515

Dear Honorable Chairs and Ranking Members Peters, Portman, Maloney, and Comer:

As we move forward as a nation to tackle unprecedented challenges to the future of work, our organizations, representing America’s leading employers of people who are blind and with disabilities, have been working together to develop a consensus approach to addressing the issues before us and the Nation. Together, and in partnership with Congress, we want to craft and enact new policies that will enhance access to meaningful and productive careers for millions of Americans who have traditionally faced difficulty finding employment. We are writing to share our principles and suggested approaches with you on a pro-jobs agenda for the people we represent.

The economic catastrophe of the past year has brought devastation to millions of Americans, but none more so than for individuals who are blind and with disabilities. Research conducted by Global Disability Inclusion found that close to 40% of people with disabilities were laid off or furloughed as a result of the ongoing pandemic. The jobs provided by our agencies via the AbilityOne Program, however, have held steady. Indeed, our organizations continue to provide employment for the same number of people as we did a year ago – a fact that speaks to the durability and enduring importance of the AbilityOne Program to people who are blind and with disabilities.

Despite the pandemic-proven resilience of the AbilityOne Program and the jobs it affords people who are blind and with disabilities, we believe that any expansion of job opportunities for this community begins with a thoughtful transformation of the Program. Since its initial origins over 75 years ago as the Wagner-O’Day Act, the AbilityOne Program has successfully paired hundreds of thousands of workers
with federal contracting opportunities – providing employment to hard working Americans who are blind or have disabilities while also driving great value and results for the U.S. taxpayer. In recent years, we take great pride in the fact that the Program has provided an especially impactful job boost for returning disabled servicemen and women from Afghanistan, Iraq, and other theaters of war.

In recent years, we have made great progress in modernizing our approach to employment by expanding opportunities for knowledge-based jobs such as Contract Management Support and enacting training programs that encourage upward mobility. And our commitment to improvement has been recognized; indeed, this past year, AbilityOne jobs were designated as part of the Defense Industrial Base Essential Critical Infrastructure and advised by the federal government that they “have a special responsibility” to maintain their normal work schedule. Our workforce embraced this designation with enthusiasm, taking great pride that they were deemed “essential.” We all agree, however, that the Program is in need of strengthening in order to provide for its long-term stability and to remain relevant to the changing workplace. The following are our suggestions for a good place to start:

14(c)
Disability rights advocates have long argued that the use of special wage certificates for employees under the 14(c) waiver provisions of the Fair Labor Standards Act should end. We agree. Until 14(c) is repealed, we believe that no special wage certificates should be used on AbilityOne contracts so that all employees are provided a fair level of wages.

Ratio
Under current law, for an agency to be deemed eligible for program participation, 75% of the direct labor must be performed by employees with disabilities. Many jobs such as management and administration are not counted in this calculation, which gives the impression that employees with disabilities are somehow ineligible to attain these jobs. This fuels the argument that the jobs offered within the AbilityOne program do not offer the opportunity for an upward career path. This impression is a false one, and we believe that in any change in the law, the ratio should be modified to account for all employees, regardless of their position in the organization.

If all jobs offered by the program are paid a full and fair wage and all jobs have opportunities for advancement, then all jobs within the AbilityOne program should qualify as Competitive Integrated Employment by the US Department of Education so that those employees with disabilities remain eligible for training and other vocational resources that ensure they remain independent and self-sufficient.

Definition of Disability
Our organizations support the adoption of a modern definition of disability that respects the people we serve such as the one proposed by the Department of Defense’s “898 Panel” on AbilityOne Contracting Oversight, Accountability, and Integrity. Such a change would eliminate the outdated definition that describes a person with a disability as “unable to maintain normal competitive employment” which we know to be false.
Eligibility determination
We believe that eligibility for participation in the AbilityOne Program should be determined by a licensed medical professional. Assuring the integrity of the program is a fundamental obligation we have to all Americans. Relying on licensed medical professionals who are bound by a code of ethics will provide added assurance.

Mandatory Status
Under current law, nonprofit agencies designated by the AbilityOne Commission are mandatory sources of supply for all entities of Government for commodities and services included on the Procurement List. We agree that the Mandatory Status in current law is critical to the viability of the program and should remain intact. In addition, we also call for the adoption of a 1.5% Federal Procurement Goal which would encourage federal prime contractors to significantly grow and diversify their employment. Moreover, extending the goal to federal prime contractors would create supplier/customer relationships between the nonprofit employers and the private sector that would facilitate job placement opportunities for employees with disabilities, much as they have with government jobs over the years.

SSDI
While not technically related to the AbilityOne statute, we believe that the successful employment of persons who are blind and have disabilities requires the elimination of the so-called Social Security Disability Insurance (SSDI) earnings cliff. Under current law, people with disabilities are incented to refuse promotions, raises, and even work hours for fear of losing valuable benefits such as health care for dependents. Removing this major disincentive for people to work or to accept opportunities for professional advancement would clearly increase the rate of employment of people with disabilities in the economy. We encourage Congress to address this unintended consequence of current law.

In sum, we are grateful for this opportunity to share these positions with you and are optimistic for the potential of achieving long lasting, bipartisan reform of this landmark disability employment law. We believe that the recommendations outlined in this letter can double the number of job opportunities for people who are blind and have disabilities and stand ready as a community that is united in both purpose and vision to work with you towards strengthening AbilityOne’s mission for the road ahead.

Respectfully,

Kevin A. Lynch
President and CEO, NIB
Reinhard Mabry  
President, NAEPB

Richard Belden  
Interim President and CEO, SourceAmerica

Carol Carr  
President, NCSE

Cc:  
Senator Patty Murray, Senate Committee on Health, Education, Labor and Pensions, Chair
Senator Richard Burr, Senate Committee on Health, Education, Labor and Pensions, Ranking Member
Senator Patrick Leahy, Senate Committee on Appropriations, Chair
Senator Richard Shelby, Senate Committee on Appropriations, Ranking Member
Senator Jack Reed, Senate Committee on Armed Services, Chair
Senator James Inhofe, Senate Committee on Armed Services, Ranking Member
Representative Bobby Scott, House Committee on Education and Labor, Chair
Representative Virginia Foxx, House Committee on Education and Labor, Ranking Member
Representative Rosa DeLauro, House Committee on Appropriations, Chair
Representative Kay Granger, House Committee on Appropriations, Ranking Member
Representative Adam Smith, House Committee on Armed Services, Chair
Representative Mike Rogers, House Committee on Armed Services, Ranking Member
Appendix F
APPENDIX F of the final report to Congress from the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity -- Identification of Issues for Congressional Action

A BILL

To amend the Javits-Wagner-O’Day-Act, chapter 85 of title 41, United States Code, to modernize the AbilityOne Program to ensure alignment of the program with federal disability rights laws, reduce waste, fraud, and abuse in the program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the AbilityOne Modernization Act.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Findings; Purpose; Policy.

Sec. 3. Revisions to definitions and duties and powers of the Commission.

Sec. 4. New provisions.

SEC. 2. FINDINGS; PURPOSE; POLICY.

Reserved.
SEC. 3. REVISIONS TO DEFINITIONS AND DUTIES AND POWERS OF THE COMMISSION.

(a) Section 8501 of title 41, United States Code, is amended—

(1) by striking paragraph (2) in its entirety and inserting the following:

“(2) COMMISSION.—The term “Commission” means the Committee for the Employment of People with Significant Disabilities, also operating as the U.S. AbilityOne Commission. The Commission may, by rulemaking, change its name to the U.S. AbilityOne Commission or a successor name. The Commission has exclusive authority to administer the AbilityOne Program.”;

(b) Section 8502(g) of title 41, United States Code, is amended—

(1) by adding new subsection (3) Duty locations — (3) Duty locations – The Commission may, for personnel appointed under this subsection, and in accordance with rules of the Office of Personnel Management, designate an employee’s remote or telework worksite that is outside the local commuting area of the Commission’s office as the official duty location of the employee.
(c) Section 8503 of title 41, United States Code, is amended—

(1) inserting in subsection (a)(1) the word “annually” after “publish” and before “in the Federal Register and by replacing the existing subsection (a)(2) Changes to List to the following language:

“Effective October 1, 2022, the Commission shall provide up to 21 calendar days’ public notice of a proposed addition to and up to 21 calendar days' notice for a deletion from its Procurement List to the single, Government-wide point of entry in a manner reasonably describing the proposed action and any limitations or conditions established by the Commission. The Commission shall list the effective date of the action and a method interested parties may use to provide comments to the Commission on the proposed action. The Commission may establish limitations and conditions on products and services added to the procurement list when the Committee determines appropriate limitation or conditions are necessary.”

SEC. 4. NEW PROVISIONS.

Section 8504 of title 41, United States Code, is amended—

(1) by inserting a new subsection (c) that reads: “The Commission may establish limitations and conditions on products and services added to the
procurement list when the Committee determines appropriate limitation or conditions are necessary,"

(2) by inserting a new subsection (d) that reads: “All exceptions to the mandatory requirement stated in subsection (a) shall be made by express amendment to subsection (b) of this act.”

IN GENERAL.—Chapter 85 of title 41, United States Code, is amended by adding after Section 8506 the following new section,—

“SEC. 8507. PROGRAM FEE REVENUES

“If nonprofit agencies pay a program fee to a central nonprofit agency, such funds shall be treated as appropriated government funds governed by section 1352(a)(2) of title 31, United States Code.”

Brief Explanation of Issues Identified for Congressional Action

Proposed name change

The Commission proposes to change the formal name of the program from Committee for Purchase from People who are Blind or Disabled to the Committee for the Employment of People with Significant Disabilities. The Commission believes that the formal name of the program is outdated, and that the new name better reflects the current purpose of the AbilityOne Program. The new language also permits the Commission to update the informal name of the program, if necessary.
Telework Authorization Language

Although not explicitly required by the Telework Enhancement Act of 2010, the Commission proposes to establish the authority to operate as a remote workplace, based on the recommendation of the General Counsel of the U.S. Patent and Trademark Office (USPTO). USPTO utilized telework earlier than other Federal agencies, and has shared some lessons learned. The Commission plans to continue to maximize telework and to hire remote employees after the COVID-19 pandemic ends.

Change from 30 to 21 days for Posting PL additions

To implement recommendation 20 of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity, the Commission proposes to reduce the required period of time for posting proposed Procurement List additions and deletions, which presently consists of two 30-day intervals, to a single comment period of up to 21 days announced through the Government-wide single point of entry. This change will assist the Commission in reducing the lead-time required for Procurement List additions and deletions while being more agile and timely in meeting Federal acquisition requirements. Electronic means for posting and receiving comments allows interested parties to learn of the Commission’s actions and to comment on them in a shorter timeframe than the 30-day periods currently required by the JWOD Act. Finally, the Commission notes that it rarely receives comments during the 30-day period currently in effect.

Clarifying the Commission’s existing authority to limit the scope of and/or place conditions on additions to the Procurement List

The Commission proposes to amend the JWOD Act, specifically 41 U.S.C. 8503(a)(2) or the applicable newly drafted section, to provide the Commission clear statutory authority to place limitations and conditions on products and services added to the Procurement List (PL). This authority is currently stated in the Commission’s implementing regulation at 41 C.F.R. 51-5.3, but has been contested through bid protests in the Court of Federal Claims. In 2021, two different nonprofit agencies challenged the Commission's authority to place percentage limitations on military clothing and equipment items -- SEKRI v. U.S. and Goodwill Industries of South Florida v. U.S. While the court dismissed the cases on procedural grounds (one case is on appeal), the plaintiffs argued that the nonprofit agencies currently producing a percentage of the military clothing or equipment (e.g. 50% of the total requirement) are entitled to the Government-wide
mandatory source (e.g. 100% of the total requirement). The NPAs’ arguments defy longstanding precedent and undermines the Government’s ability to manage its industrial base by establishing multiple sources for essential, go-to-war items. The Commission seeks clear authority in the JWOD Act to place limitations and conditions on Procurement List product or services to prevent program-wide disruptions if arguments in these cases are ultimately successful, and to prevent a loss of support for Procurement List additions by key program customers such as the Defense Logistics Agency.

Requirement that all exceptions to the JWOD Act be made by express amendment to the JWOD Act

The Commission proposes to require that all future exceptions to the JWOD Act be made by express amendment to the exceptions section of the JWOD Act. This change is necessary to prevent further erosion of the JWOD Act’s authority to create mandatory source purchases for all entities of the Federal Government. Subsequent statutes have superseded the JWOD Act by including language such as, “Notwithstanding any other act of law;” thereby giving contracting preferences or exceptions to other socioeconomic categories or programs without notice to or discussion with the Commission or the AbilityOne Program’s stakeholders.

Requirement that Program Fees authorized by the Commission to be collected by the designated Central Nonprofit Agencies be subject to the same limitations applicable to Federal contractors

This change implements recommendation five of the Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity. The Panel’s intent is to treat Program Fees collected by the Central Nonprofit Agencies as funds earned by Federal contractors, subject to certain limitations on use, such as a prohibition to use such funds to lobby for additional contracts.